



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

6ENWC

JAN 31 2012

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7010 1060 0002 1872 6940)

REPLY TO: 6WQ-NP

RECEIVED

FEB 3 - 2012

6EN-W

Mr. John Kelly, P.E.
Albuquerque Metropolitan Arroyo Flood Control Authority
2600 Prospect NE
Albuquerque, NM 87107

Re: Application to Discharge to Waters of the United States Permit No. NMS000101
City of Albuquerque Municipal Separate Storm Sewer System

Dear Mr. Kelly:

This package constitutes EPA's final permit decision for the above referenced facility. Enclosed are the responses to comments received during the public comment period and the final permit. According to EPA regulations at 40 CFR 124.19, within 30 days after a final permit decision has been issued, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision.

Should you have any questions regarding the final permit, please feel free to contact Suzanna M. Perea of the NPDES Permits Branch at the above address, or by telephone: (214) 665-7217, by fax: (214) 665-2191, or by E-mail: perea.suzanna@epa.gov. Should you have any questions regarding compliance with the conditions of this permit, please contact the Water Enforcement Branch at the above address or by telephone: 214-665-6468.

Sincerely yours,

William K. Honker, P.E.
Acting Director
Water Quality Protection Division

Enclosures

cc w/enclosures: New Mexico Environment Department
Honorable Frank Lujan, Governor, Pueblo of Isleta
Honorable Malcolm Montoya, Governor, Pueblo of Sandia

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DALLAS TX 75202-2733

6ENWC

JAN 31 2012

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7010 2780 0002 4357 8365)

REPLY TO: 6WQ-NP

Mr. Roland Pentilla, P.E.
The City of Albuquerque
Department of Municipal Development
P.O. Box 1293
Albuquerque, NM 87103

Re: Application to Discharge to Waters of the United States Permit No. NMS000101
City of Albuquerque Municipal Separate Storm Sewer System

Dear Mr. Pentilla:

This package constitutes EPA's final permit decision for the above referenced facility. Enclosed are the responses to comments received during the public comment period and the final permit. According to EPA regulations at 40 CFR 124.19, within 30 days after a final permit decision has been issued, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision.

Should you have any questions regarding the final permit, please feel free to contact Suzanna M. Perea of the NPDES Permits Branch at the above address, or by telephone: (214) 665-7217, by fax: (214) 665-2191, or by E-mail: perea.suzanna@epa.gov. Should you have any questions regarding compliance with the conditions of this permit, please contact the Water Enforcement Branch at the above address or by telephone: 214-665-6468.

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Honorable Malcolm Montoya, Governor, Pueblo of Sandia



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DALLAS TX 75202-2733

6ENWC

JAN 31 2012

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7010 1060 0002 1872 6957)

REPLY TO: 6WQ-NP

Mr. Larry Velasquez, P.E.
New Mexico Department of Transportation
District III
P.O. Box 91750
Albuquerque, NM 87199-1750

Re: Application to Discharge to Waters of the United States Permit No. NMS000101
City of Albuquerque Municipal Separate Storm Sewer System

Dear Mr. Velasquez:

This package constitutes EPA's final permit decision for the above referenced facility. Enclosed are the responses to comments received during the public comment period and the final permit. According to EPA regulations at 40 CFR 124.19, within 30 days after a final permit decision has been issued, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision.

Should you have any questions regarding the final permit, please feel free to contact Suzanna M. Perea of the NPDES Permits Branch at the above address, or by telephone: (214) 665-7217, by fax: (214) 665-2191, or by E-mail: perea.suzanna@epa.gov. Should you have any questions regarding compliance with the conditions of this permit, please contact the Water Enforcement Branch at the above address or by telephone: 214-665-6468.

Sincerely yours,

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Acting Director
Water Quality Protection Division

Enclosures

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Honorable Malcolm Montoya, Governor, Pueblo of Sandia



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

6ENWC

JAN 31 2012

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7010 1060 0002 1872 6964)

REPLY TO: 6WQ-NP

Mr. David W. Harris
University of New Mexico
Department of Safety, Health and Environmental Affairs
1801 Tucker Street N.E.
Albuquerque, NM 87131

Re: Application to Discharge to Waters of the United States Permit No. NMS000101
City of Albuquerque Municipal Separate Storm Sewer System

Dear Mr. Harris:

This package constitutes EPA's final permit decision for the above referenced facility. Enclosed are the responses to comments received during the public comment period and the final permit. According to EPA regulations at 40 CFR 124.19, within 30 days after a final permit decision has been issued, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision.

Should you have any questions regarding the final permit, please feel free to contact Suzanna M. Perea of the NPDES Permits Branch at the above address, or by telephone: (214) 665-7217, by fax: (214) 665-2191, or by E-mail: perea.suzanna@epa.gov. Should you have any questions regarding compliance with the conditions of this permit, please contact the Water Enforcement Branch at the above address or by telephone: 214-665-6468.

Sincerely yours,

William K. Honker, P.E.
Acting Director
Water Quality Protection Division

Enclosures

cc w/enclosures: New Mexico Environment Department
Honorable Frank Lujan, Governor, Pueblo of Isleta
Honorable Malcolm Montoya, Governor, Pueblo of Sandia

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the transparency and accountability of the organization. The document then outlines the specific procedures for recording transactions, including the use of standardized forms and the requirement for double-checking entries. It also addresses the issue of data security, stressing the need for robust measures to protect sensitive information from unauthorized access or loss. The final section provides a summary of the key points and offers recommendations for ongoing monitoring and improvement of the record-keeping process.

NPDES PERMIT NO. NMS000101 RESPONSE TO COMMENTS

RECEIVED ON THE SUBJECT DRAFT NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMIT IN ACCORDANCE WITH REGULATIONS
LISTED AT [40 CFR 124.17]

RECEIVED

FEB 3 - 2012

6EN-W

APPLICANTS: City of Albuquerque
Department of Municipal Development
P.O. Box 1293
Albuquerque, NM 87103

Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)
2600 Prospect NE
Albuquerque, NM 87107

New Mexico Department of Transportation
District III
P.O. Box 91750
Albuquerque, NM 87119-1750

University of New Mexico
Department of Safety, Health and Environmental Affairs
1801 Tucker Street N.E.
Albuquerque, NM 87131

ISSUING OFFICE: U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

PREPARED BY: Suzanna M. Perea
Environmental Scientist
NPDES Permits & Technical Branch (6WQ-PP)
Water Quality Protection Division
VOICE: 214-665-7217
FAX: 214-665-2191
EMAIL: perea.suzanna@epa.gov

PERMIT ACTION: Final permit decision and response to comments received on the draft reissued NPDES permit publicly noticed on March 28, 2010.

DATE PREPARED: January 31, 2012

Unless otherwise stated, citations to [40 CFR] refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of May 6, 2009.

SUBSTANTIAL CHANGES FROM DRAFT PERMIT

The substantial changes from the draft NPDES permit publicly noticed on March 28, 2010 include removal of requirements related to the fecal coliform TMDL superceded by an *E. coli* TMDL; extension of compliance deadlines consistent with delays in permit issuance; establishment of criteria for predevelopment hydrology requirements for post-development controls; incorporation of requirements consistent with USFWS Biological Opinion; and, extension of AMAFCA coverage to the urbanized area outside the corporate boundary of the City of Albuquerque.

STATE CERTIFICATION

Letter from Glenn Saums, New Mexico Environment Department (NMED) to Miguel I. Flores, (EPA) dated July 26, 2010.

CONDITIONS OF CERTIFICATION

There are no conditions of State certification in addition to the condition of certification which requires the use of the Congener Method (Method 1668: Chlorinated Biphenyl Congeners in Water, Soil, Sediment, and Tissue by HRGC/HRMS) for purposes of PCB monitoring sent by letter dated April 20, 2010 to Claudia Hosch, Associate Director, USEPA Region 6 NPDES Permits & TMDL Branch from Glenn Saums, Acting Chief, Surface Water Quality Bureau.

EPA also received input from the Pueblos of Isleta and Sandia under Section 401(a)(2) of the Clean Water Act

COMMENTS RECEIVED ON DRAFT PERMIT

1. Letter from Glenn Saums, New Mexico Environment Department (NMED), to Miguel I. Flores, (EPA) dated July 26, 2010.
2. Letter from Governor J. Robert Benavides, Pueblo of Isleta, to Diane Smith, (EPA) dated July 28, 2010.
3. Letter from Governor Joe M. Lujan, Pueblo of Sandia, to Diane Smith, (EPA) dated July 20, 2010.

4. Letter from David S. Campbell, City of Albuquerque Chief Administrative Officer, to Diane Smith, (EPA) dated July 28, 2010.
5. Letter from John Kelly, Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) Executive Engineer, to Diane Smith, (EPA) dated July 28, 2010.
6. Letter from Gary L. J. Giron, New Mexico Department of Transportation Cabinet Secretary, to Diane Smith, (EPA) dated July 28, 2010.
7. Letter from Joel Straquadine, The University of New Mexico Safety Officer, to Diane Smith, (EPA) dated July 28, 2010.
8. Letter from Wally Murphy, Fish and Wildlife Service New Mexico Ecological Services Field Office Supervisor, to Julie Alcon, US Army Corps of Engineers Environmental Resources Section Chief, dated July 28, 2010, and forwarded by Julie Alcon (Corps) to Diane Smith, (EPA) via email.

RESPONSE TO COMMENTS

1. Glenn Saums, New Mexico Environment Department (NMED)

FACT SHEET -

Comment 1: Part 16.b.i cites Table VI.C. SWQB believes the correct table is Table X.C. Part 16.b.i.1 cites Tables VI.A, VI.B, and VI.C. SWQB believes the correct tables are X.A, X.B and X.C respectively. Part 16.b.i.2 and 16.b.i.3 cite tables VI.A and VI.B. SWQB believes the correct tables are X.A and X.B.

Response 1: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 2: Part 16.b.iv states "[t]oxicity monitoring requirements are discussed in Section 16 above." SWQB believes EPA may mean Section 15 above.

Response 2: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 3: Part 17.b.ii 7th sentence cites Part I.D.6 of the permit. SWQB believes EPA means Part I.C.6 of the permit.

Response 3: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

DRAFT PERMIT -

Comment 4: Part I.B.2.a states "[if] the permittee's MS4 discharges to an impaired water without an approved TMDL, the permittee shall comply with Part I.C.1 of the permit...."

Although SWQB agrees that the permittees need to comply with Part I.C of the permit, Parts I.B.1.d, e and f contain specific requirements, including references to appropriate schedule tables, for dissolved oxygen, PCBs and temperature all of which are listed as probable causes of impairment of the Rio Grande in Albuquerque for which there is not yet a TMDL. Therefore, SWQB believes EPA must cite Part I.B.1, perhaps in addition to Part I.C, in Part I.B.2.a.

Response 4: EPA agrees. The final permit will change the citation to include Part I.B.1.

Comment 5: Part I.B.2.b includes several references (1st and 2nd sentences, B.2.b(i) 1st and 2nd sentences) to complying with requirements of Part I.B.1. While SWQB believes the permittees must comply with Part I.B.1, the permittees must also comply with Part I.C and believes EPA should add the additional citation for clarity.

Response 5: EPA agrees. The final permit will change the citation to include Part I.C.

Comment 6: Part I.B.2.c in the 1st sentence of the 2nd paragraph states, “[a] new bacteria TMDL for the Middle Rio Grande was approved by the New Mexico Environment Department on April 13, 2010.” The TMDL was approved by the Water Quality Control Commission, not the New Mexico Environment Department. In addition, this paragraph and other parts of the Draft Permit, including the tables (e.g., Part VI, Tables II.A and II.B.1), and Fact Sheet address changes to be made by the permittees when the TMDL is approved by EPA. As EPA undoubtedly knows, this TMDL was approved by EPA on June 30, 2010 and SWQB suggests that EPA make appropriate changes to the permit as a result of this approval.

Response 6: EPA agrees. The final permit will make the necessary changes to the fact sheet and final permit.

Comment 7: Part III.A.6 requires sample collection “...for the parameters listed in Table X.A – Representative Monitoring Annual Requirements.” SWQB believes samples must be collected for the parameters listed in both Tables X.A and X.B – Representatives Monitoring Bi-Annual Requirements.

Response 7: EPA agrees. The final permit will change the citation to include both Tables XII.A and XII.B.

Comment 8: Part III.G.1 requires the permittees to “...perform in-stream wet weather monitoring at all locations tributary to impaired waters listed under CWA § 303(d), plus one (1) location located upstream of the MS4.” Part III.G.2 requires permittees to “...perform annual in-stream wet weather monitoring for the impaired water pollutant(s) of concern at one (1) location upstream of the MS4 and one (1) downstream of the last MS4 drainage area entering the impaired water” (these same requirements are include in Table IX). SWQB is unclear about what EPA intends regarding these two, apparently different, requirements. There are a number of

tributaries to impaired waters that convey MS4 drainage to the Rio Grande and many of these tributaries have headwaters upstream of the Albuquerque incorporated area. EPA needs to clarify whether the permittees are required to sample tributaries where they enter the incorporated area, whether the permittees are required to sample the Rio Grande where these tributaries enter the Rio Grande, or both. However, G.2 appears to only require sampling at one location in the Rio Grande above where any MS4 drainage enters the river and one below. In addition, G.1 does not specify a monitoring frequency although G.2 does. SWQB believes that EPA should require the permittees to sample the tributaries as well as the Rio Grande upstream and downstream at least annually.

Response 8: EPA agrees. The final permit will change the Part III.G.1 requirement to "shall perform annual in-stream wet weather monitoring for all constituents listed at Part VI. Tables XII.A and XII.B at all locations tributary to impaired waters (at the point where they enter the Rio Grande and if originating outside the MS4, where it enters the MS4)..."

Comment 9: Part VI Table II.A in the header notes that Table II.A will be "...replaced/integrated with Table II.C in final permit if TMDL is approved by EPA by that date." SWQB believes that EPA intends to replace/integrate Table I.A requirements with Table II.C requirements regardless of whether approval is completed by the date of the final permit (TMDL was approved by EPA on June 30, 2010 – see comment #6).

Response 9: EPA agrees. The final permit will appropriately integrate Tables II.A and II.C.

Comment 10: Part VI Table II.B.1 contains a "Formula to Compare Actual Loadings to Target Values," which states:

$$C \text{ as cfu/100 ml} * 1,000 \text{ ml/1 L} * 1 \text{ L/0.264 gallons} * Q \text{ as MG/day} = \text{cfu/day}$$

Where: C = 30-day geometric mean FC concentration
Q = event flow in million gallons per day.

This formula is somewhat different than the formula in the TMDL (Equation 4), which states:

$$C \text{ as cfu/100 mL} * 1,000 \text{ mL/1L} * 1 \text{ L/0.264 gallons} * 1,000,000 \text{ gallons/MG} * Q \text{ as MG/day} = \text{cfu/day}$$

Where: C = water quality standard criterion for bacteria,
Q = stream flow in million gallons per day (mgd).

Response 10: Noted in the administrative record. Table II.B.1 will be removed in the final permit as it was replaced on June 30, 2010 by EPA approval of the 2010 TMDL.

Comment 11: Part VI Table IV at A.1.ii requires the permittees to design and implement a PCB “monitoring study.” SWQB considers it to be critical that this study include analytical monitoring in order to assure that discharges from the MS4 are protective of applicable water quality standards and believes this is what EPA intends. If this is not EPA’s intent, SWQB reserves the right to amend its certification of this permit. SWQB request that EPA clarify that analytical monitoring for PCBs is required.

Response 11: EPA agrees. The final permit will change language at A.1.ii of Table IV to require design and implementation of a PBC monitoring study and a requirement to perform analytical monitoring.

Comment 12: Part VI Table IV at A.1.iii and iv refer to a “confirmation study.” Since the term “confirmation study” is not mentioned or defined elsewhere in this table, SWQB believes EPA may be referring to the “monitoring study” in Table IV at A.1.ii. If this is the case, these references should be changed to “monitoring study” for consistency and clarity. If not, EPA should describe to what the term refers.

Response 12: EPA agrees. The final permit will change the term “confirmation” to “monitoring.”

Comment 13: Part VI Table X.B is entitled “Representative Monitoring Bi-Annual Requirements: Monitoring Locations ML1 – ML5¹².” Footnote 12 in the 1st sentence states “[p]arameters included in Table X.B are to be monitored biannually (every other year)” and in the last sentence states “...shall continue on the every other year schedule established by prior permit.” Bi-annual means two times per year not every other year. If EPA intends that the parameters in Table X.B be monitored every other year, the correct term is biennial.

Response 13: EPA agrees. The final permit will change the term “bi-annual” in each of these instances to “biennial.”

Comment 14: The Draft Permit appears to contain several typographical errors and incomplete or incorrect citations. Some of these are significant, some probably are not. Although this list may not be complete, the ones identified by SWQB are as follows:

- Part I.B.1 refers to Part I.D – there is no I.D so perhaps EPA means I.C. The same sub-part refers to specific requirements included in Part VI, Tables III and IV. EPA should include Table V in this list.
- Part III.A.2.e cites Part III.G. SWQB believes the correct citation is Part III.J.
- Part III.A.4 states, “... and any additional sampling conducted for Part III.A.5....” SWQB believes EPA may mean Part III.A.3.
- Part III.A.5 states “[t]he following requirements apply only to storm event discharge samples collected for Parts III.A.1 and III.A.5. SWQB believes EPA may mean Parts III.A.1 and III.A.3.

- Part III.H.1 requires that the annual report "...include the status of compliance with all schedules established under this permit and the status of actions required in Part I.C and Part III.D...." SWQB believes EPA may mean Parts I.B and Part III.D.
- Part III.H.3.b requires that the annual report include monitoring data "...if results are below minimum analytical (MAL)" (emphasis added). SWQB believes EPA means above minimum quantification level (MQL).
- Part IV.A in several locations includes a list of tables, some of which don't appear to exist. In addition, there are several tables missing from the lists. For instance, there are no Tables I.I and I.J and Tables VI, VII, VIII and IX are not included on the lists.
- Part VI Table I.A at 9) requires permittees to conduct construction site inspections of 100 percent of all "installed control measures" each year. SWQB believes EPA means 100 percent of all "construction projects" each year (see Part I.C.5a(v)(1)).
- Part VI Table I.E at A cites Part I.C.5.h. SWQB believes the correct citation is I.C.5.f.
- Part VI Table I.F at A cites Part I.C.5.i. SWQB believes the correct citation is I.C.5.g.
- Part VI Table I.G at A cites Part I.C.5.k and at A.2) cites Part I.C.5.k(v)(5). SWQB believes the correct citations are I.C.5.i and I.C.5.i(v)(5) respectively.
- Part VI Table I.H at A cites Part I.C.5.l. SWQB believes the correct citation is I.C.5.j.
- Part VI Table III at A cites Part I.C.1.d. SWQB believes the correct citation is I.B.1.d.
- Part VI Table V at A cites Part I.C.1.d. SWQB believes the correct citation is I.B.1.f.
- Part VI Table VI at G.2) cites Part III.G. SWQB believes the correct citation is III.J.

Response 14: EPA agrees. The final permit will change the citations identified. Additionally, the final permit will add "...These inspections may be a component of a normal building inspection and may be tailored to the size and nature of the construction project." at Part VI, Table I.A item 9 for clarification purposes.

Comment 15: SWQB notes that many of the tributaries used to convey storm water from the Albuquerque MS4 (North Diversion Channel, Tijeras Arroyo, Hahn Arroyo, etc.) are "surface waters of the state" and may be "waters of the United States." Fact Sheet, Part 12.c states "[t]he goal of this permit is for implementation of the SWMP and other permit conditions to provide a reasonable assurance that the permitted activity will be conducted in a manner which will not violate applicable Water Quality Management Plan and Water Quality Standards...." Since the vast majority of the SWMP program elements and other permit conditions require control or elimination of pollutant sources prior to entry into these tributaries, SWQB anticipates that compliance with the terms and conditions of the permit and the State's certification provides this reasonable assurance.

Response 15: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

2. Governor J. Robert Benavides, Pueblo of Isleta

Comment 1: COMPLIANCE WITH PUEBLO OF ISLETA WATER QUALITY STANDARDS – The Pueblo of Isleta has enacted Water Quality Standards on January 24, 1992 (Tribal Council Resolution No. 92-14) and amended on March 18, 2002 (Tribal Council Resolution No. 02-064). These Water Quality Standards are based on authority given to U.S. EPA in the Clean Water Act and were upheld in *City of Albuquerque v. U.S. EPA*, 97 F.3d 415 (10th Cir. 1996). In that court case, the Tenth Circuit upheld U.S. EPA's power to require upstream discharges to comply with the Pueblo of Isleta's downstream Water Quality Standards. Therefore, the permittees' must comply with Water Quality Standards. The permit should contain language acknowledging these Water Quality Standards.

Response 1: Noted in the administrative record. EPA recognizes the obligation to be protective of all applicable water quality standards which, for this permit, includes those of the Pueblos of Isleta and Sandia and the State of New Mexico. The draft permit and fact sheet contain language acknowledging the Pueblo's Water Quality Standards. No changes are made to the final permit as a result of this comment.

Comment 2: DISCHARGE MONITORING REPORTS AND OTHER REPORTS – A written copy of each of the permittee's Discharge Monitoring Reports must be submitted to the Pueblo of Isleta at the following address:

Natural Resources Department Director
Pueblo of Isleta
PO Box 1270
Isleta NM 87022

Response 2: Noted in the administrative record. The Pueblo's address has been corrected in the final permit as a result of this comment.

Comment 3: MONITORING AND REPORTING – Add the following compounds to the list of parameters required to be monitored by each of the permittees on a monthly or quarterly basis:

- | | |
|---------------------------|----------------------------------|
| (1) Diazinon | pesticide |
| (2) Methoxychlor | pesticide |
| (3) Total trihalomethanes | disinfection by product, solvent |
| (4) Trichloroethylene | chlorinated hydrocarbon, solvent |
| (5) 1,1,1-Trichloroethane | solvent |
| (6) Total Xylenes | solvent |

The permittees shall be jointly responsible for conducting quarterly monitoring events at a sample site on the Rio Grande that is south of Interstate 25 and north of the Pueblo of Isleta northern boundary. Compounds to be measured are those that are protective of the Pueblo of Isleta's uses for primary contact ceremonial and agricultural water supply.

Any noncompliance which may endanger health or the environment shall be orally reported to the Pueblo of Isleta at (505) 869-5748 as soon as possible, but within 12 hours from the time the permittee becomes aware of the circumstance. A written report of overflows which endanger health or the environment shall be provided within 5 days of the time the permittee becomes aware of the circumstance.

Response 3: In response to the Pueblo of Isleta's request for quarterly or monthly monitoring for diazinon, methoxychlor, total trihalomethanes, trichloroethylene, 1,1,1-trichloroethane, and total xylenes, the EPA reviewed existing storm water monitoring data and the current status of the pesticides diazinon and methoxychlor. All residential uses of diazinon were cancelled as of December 31, 2004. The Agency does not expect that any Methoxychlor products remain following suspension of the technical product in 2000 and cancellation of all tolerances in 2002. Data collected by the permittees on MS4 discharges over the 1990-2010 time frame for total trihalomethanes, 1,1,1-trichloroethane, and total xylenes indicate they are rarely detected and then at levels far below the Pueblo of Isleta in-stream primary contact ceremonial use water quality standards (even before mixing with the Rio Grande above Isleta Pueblo). 1,1,1-trichloroethane with a 42 µg/l standard was detected in only 2 of 233 samples, with the highest result being 2.3 µg/l or 5.5% of the standard. Total Trihalomethanes with a 80 µg/l standard was detected in only 6 of 156 samples, with the highest result being 5.8 µg/l or 7.25% of the standard. Total Xylenes with a 10 mg/l (10000 µg/l) standard, was detected in only 14 of 228 samples, with the highest result being 0.8 µg/l or 0.01% of the standard. For trichloroethylene, data in the national storm water quality database was reviewed and of 74 observations across the nation, no results above detection were reported.

Based on actual monitoring data, the EPA finds that the likelihood for total trihalomethanes, 1,1,1-trichloroethane, and total xylenes to be in authorized discharges from the Albuquerque MS4 in quantities that would cause or contribute to a violation of Pueblo of Isleta water quality standards. Since diazinon and methoxychlor have both been removed from the private use market for eight or more years and are not persistent long term in the environment, there is no reason to believe these two pesticides would be found in significant quantities in discharges from the Albuquerque MS4. National storm water quality data suggests trichloroethylene is not typically found in municipal storm water. Following discussion of this information with Isleta environmental department staff on January 31, 2012, EPA will not be requiring monitoring for diazinon, methoxychlor, total trihalomethanes, trichloroethylene, 1,1,1-trichloroethane, and total xylenes in the final permit. Should information indicating the presence of these pollutants at a level of concern arise during the permit term, the EPA will reopen discussions with the Pueblo of Isleta on the need for additional monitoring.

Comment 4: PERMIT MODIFICATION (reopener clause) – The permit may be reopened and modified during the life of the permit if the Pueblo of Isleta's Water Quality Standards are revised, if one or more standards becomes newly established, or if a standard is remanded by the Pueblo of Isleta (subject to EPA approval). The permit may be modified to conform with a revision of the Pueblo of Isleta Water Quality Standards.

Response 4: EPA agrees that this permit may be modified to comply with applicable water quality standards revised and approved subsequent to finalization of this permit. "Water quality standards" has been added to the reopener clause at Part V.A of the final permit.

3. Governor Joe M. Lujan, Pueblo of Sandia

Comment 1: Part I. INDIVIDUAL PERMIT CONDITIONS, B. SPECIAL CONDITIONS, 1. Compliance with Water Quality Standards, c. Pg. 4 of Part I. – The Pueblo of Sandia requests that an exceedance of applicable water quality standards by the MS4 should be addressed within thirty (30) days not sixty (60) days as written in the draft permit. The Pueblo of Sandia feels these exceedances should be addressed as soon as possible and controls should be implemented as soon as possible to correct noncompliance with the water quality standard.

Response 1: Given the complexity of MS4 discharges, EPA believes that 30 days may not allow sufficient time for both investigation into the cause of the problem and preparation of the required response. No changes are made to the final permit as a result of this comment.

Comment 2: Part I. INDIVIDUAL PERMIT CONDITIONS, C. STORMWATER MANAGEMENT PROGRAM (SWMP), 3. Shared Responsibility, c. Pg 6 of Part I. – The Pueblo of Sandia would like to know how EPA will monitor or enforce this condition. Will the MS4 have to submit documentation on finance, staff, equipment, etc. to fully implement their SWMP. The Pueblo of Sandia feels that this condition should be addressed in a semi-annual report to make sure compliance with the condition is being met.

Response 2: In Part I.C.6 of the final permit, each permittee is required to participate in an annual review to assess various elements of the SWMP, including shared responsibility of co-permittees. Under Part III.H of the final permit, the annual system-wide report, which includes shared responsibility information, shall be provided no later than April 1st of each year. No changes are made to the final permit as a result of this comment.

Comment 3: Part III. MONITORING AND REPORTING REQUIREMENTS, C. FLOATABLES MONITORING Pg 3 of Part III. – The Pueblo of Sandia requests that floatable material be monitored at least four (4) times a year instead of at least twice per year as written in the permit. The amount of floatables that come down from the arroyos and channels after a storm event is immense. Floatables line the easement and high water mark. They are often there for weeks and months at a time. The easement and shoreline area due to floatables becomes very aesthetically unpleasing. The Pueblo of Sandia feels that a higher frequency of floatable collection is warranted especially after storm events.

Response 3: Although the requirement at Part III.B of the final permit specifies floatables monitoring at least twice per year, additional measures found at Parts I.C.5.c and I.C.5.f of the final permit are required by the permittees to control the discharge of floatables. The monitoring is intended as an indicator of whether or not these controls are effective or need to be modified; therefore the frequency of floatable material monitoring will not be changed in the final permit. However, a floatables material monitoring station requirement will be included in the final permit at Part III.B.1 and Part VI Table VII to be located in the North Diversion Channel system above the Pueblo of Sandia.

Comment 4: Part III. MONITORING AND REPORTING REQUIREMENTS, D. TOXICITY MONITORING TO PROTECT LISTED THREATENED AND ENDANGERED SPECIES (24-HOUR ACUTE NOEC FRESHWATER). D. Pg 4 of Part III. – The addresses provided are in Part III. J not Part III G. as written in the permit. This should be corrected.

Response 4: EPA agrees. The final permit will change the citation to Part III.J.

Comment 5: Part III. MONITORING AND REPORTING REQUIREMENTS, J. REPORTING: WHERE AND WHEN TO SUBMIT, 4. Pg 9 of Part III. – The Pueblo of Sandia would like EPA to change the address for the Pueblo of Sandia that is in the permit to the correct address below:

Scott Bulgrin, Water Quality Manager
Pueblo of Sandia
481 Sandia Loop
Bernalillo, New Mexico 87004

Response 5: The Pueblo's address has been corrected in the final permit as a result of this comment.

Comment 6: Part IV. STANDARD PERMIT CONDITIONS, U. ARCHEOLOGICAL AND HISTORIC SITES, 2. A. iii. Pg. 5 of Part IV. – The Pueblo of Sandia would like EPA to change the address for the Pueblo of Sandia that is in the permit to the correct address below:

Scott Bulgrin, Water Quality Manager
Pueblo of Sandia
481 Sandia Loop
Bernalillo, New Mexico 87004

Response 6: Noted in the administrative record. The Pueblo's address has been corrected in the final permit as a result of this comment.

Comment 7: Part VI. SCHEDULES FOR IMPLEMENTATION AND COMPLIANCE, TABLE I. F: Waste Collection Programs, Pg. 6 of Part VI. – The Pueblo of Sandia requests that the compliance due date be changed to within one (1) year instead of within two (2) years of the permit effective date. The Pueblo of Sandia feels that the MS4 can get these programs going in a timely manner and that one (1) year should be sufficient to meet this condition. As currently written the MS4 will have almost half of the permit length to get the condition met.

Response 7: Given that EPA is requiring additional program elements and coordination with departments whose staff may be new to stormwater regulations, and the permittees must budget for these additional requirements, the program compliance deadline at Part VI Table I.G will remain as “Within two (2) years of permit effective date.” Permittees must continue the existing waste collection program in the interim. No changes are made to the final permit as a result of this comment.

Comment 8: PART VI. SCHEDULES FOR IMPLEMENTATION AND COMPLIANCE, TABLE I. G: Public Education and Outreach on Stormwater Impacts, Pg. 6 of Part VI. – The Pueblo of Sandia requests that the compliance due date be changed to within one (1) year instead of the within eighteen months of the permit effective date for numbers 3), 4), and 5). The Pueblo of Sandia feels that the MS4 can get these programs going in a timely manner and that one (1) year should be sufficient to meet this condition.

Response 8: Given that a number of new program elements must be developed and implemented within one year of the permit effective date and the permittees must budget for these additional elements, EPA believes that one year is not a sufficient amount of time to draft and develop education and outreach material which includes the new elements. Permittees must continue the existing waste collection program in the interim. No changes are made to the final permit as a result of this comment.

Comment 9: PART VI. SCHEDULES FOR IMPLEMENTATION AND COMPLIANCE, TABLE VI: Toxicity Monitoring to Protect Listed Threatened and Endangered (T&E) Species – Implementation of 4-Year Toxicity Testing. G. Reporting. 2) Pg. 14 of Part VI. – The addresses provided are in Part III. J not Part III G. as written in the permit. This should be corrected.

Response 9: EPA agrees. The final permit will change the citation to Part III.J.

4. David S. Campbell, City of Albuquerque Chief Administrative Officer

Comment 1: In the Fact Sheet Section 13c.iv, “Temperature” there are comments on stormwater discharges being in excess of the boiling point of water. We do not have record of a temperature reading any where near the boiling point of water, nor have we ever reported this in any Data Monitoring Report (DMR). The City has reviewed the DMR summaries sent electronically by Suzanna Perea to Roland Pentilla and Kathy Verhage on July 13, 2010 for

temperature data on the San Antonio Arroyo at the Mariposa Diversion. The City has found that a transcription error at EPA likely occurred through the omission of a decimal point. A value of 190 was recorded by EPA while a value of 19.0 was provided on the DMR (see DMR form – Attachments 1) for the Wet Season in 2007. The City would like to request that the EPA revise the fact sheet to reflect the correct data.

Response 1: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 2: In Part IC “Stormwater Management Program” Section 3 “Shared Responsibility” the four partners will be preparing a Joint Powers Agreement that will set forth primary responsibilities of each partner for various compliance issues.

Response 2: Noted in the administrative record. The final permit will identify the Joint Powers Agreement in Part I.C.3.

Comment 3: In Part IC.5.a.(i) and Table I.A, there is a requirement to update the “NPDES Stormwater Management Guidelines for Construction and Industrial Activities Handbook” within six months of the permit effective date. The MS4 partners have started assessing the effectiveness of existing BMPs. This research is not expected to give definitive guidance to allow an effective date of the permit in the next 6 to 8 months. In addition, the City will need to work with multiple internal partners and numerous community stakeholders to implement revised development rules before completing these revisions. Therefore the City requests an additional 6 months to complete this task. We do not anticipate complying with the new effluent limitation guidelines in our updated SWMP.

Response 3: Noted in the administrative record. The final permit will change the compliance deadline to “Within six months of issuance of the new Construction General Permit.”

Comment 4: In order to comply with requirements outlined in Table 1.A the City expects to prepare draft procedures within six months of the effective date of the permit. However final approval and implementation of these procedures will require additional time due to anticipated community concerns and the involvement necessary for community support.

Response 4: Noted in the Administrative Record. The final permit will change the compliance deadline for implementation of the program elements listed at Table I.A.A to within one (1) year of permit effective date.

Comment 5: It appears that Tables are missing in Part VI referencing sections from the Permit. The Specific sections that seem to be missing are as follows:

- a. Pollution Prevention and Good Housekeeping for municipal operations referencing Part I.C.5.c (Page 11 on Part I)

b. Spill Prevention from Part I.C.5.h (Page 16 or Part I).

Response 5: EPA agrees. The Pollution Prevention and Good Housekeeping for Municipal Operations has new required SWMP elements; therefore, Table I.C Pollution Prevention/Good Housekeeping for Municipal/Co-permittee Operations is included in Part VI of the final permit. However, the Spill Prevention and Response control element of the Stormwater Management Program (SWMP) is a continued condition of the previous permit. As stated in Part I.C.1, "This permit does not extend any compliance deadlines set forth in the previous permit effective December 1, 2003." The final permit will change language at Part I.C.5.h to "The permittee shall continue implementation of the program to prevent, contain, and respond to spills that may discharge into the MS4, and enhance as necessary."

Comment 6: The City has reservations about the concept to controlling runoff from sites to "pre-development runoff", as some development has a legitimate purpose as flood control. In addition, the New Mexico Office of State Engineer does not currently allow diversions of rainwater except that which can be beneficially used from roof runoff. The co-permittees will require additional time to work out these concepts related to Permit section I.C.5.b and Table I.B and will require cooperation with the State Engineer's Office. Significant changes will potentially require changes to existing statutory and regulatory requirements.

Response 6: EPA recognizes that the permittees may be subject to additional state and/or local flood control requirements and state water rights appropriations requirements. This permit does not prevent permittees from requiring additional controls for flood control purposes. For clarification, the final permit will add "...This permit does not prevent imposition of more stringent requirements related to flood control. Where both the 90th percentile storm event capture requirement and flood control requirements on site cannot be met due to site conditions, the 90th percentile storm event capture requirements may be met through a combination of on-site and off-site controls..." to I.C.5.b(iv).

Mr. Roland Pentilla, Albuquerque Storm Drainage Design Section Manager, provided the EPA with the City's preferred definition of pre-development hydrology (0.35 inches within 24 hours in the Albuquerque area) via email correspondence. This is the amount of rainfall that, under predevelopment conditions, would not be expected to result in appreciable runoff. Therefore, the final permit will change the runoff reduction requirement at Part I.C.5.b(iv) and Part VI. Table I.B item 9 to "...site design standards that capture the 90th percentile storm event runoff to ensure the hydrology associated with new development and redevelopment sites mimic the pre-development hydrology of the previously undeveloped site except in instances where full compliance with the pre-development hydrology requirement conflicts with state water rights appropriations requirements... Where state water rights appropriations limit the ability to fully meet the 90th percentile standard on site, measures to minimize increased runoff consistent with requirements under water rights laws must still be implemented." For the purposes of this permit, monitoring for pre-development hydrology shall be met by capturing the 90th percentile storm event runoff (consistent with any limitations on that capture) which under undeveloped

natural conditions would be expected to infiltrate or evapotranspire on-site and result in little, if any, off-site runoff.

Additionally, the final permit will change the compliance deadlines for implementation of the program elements listed at: Table I.B.A.1) through I.B.A.3) to "Within one (1) year of permit effective date"; Table I.B.A.4) through I.B.A.6) to "Within eighteen (18) months of permit effective date"; Table I.B.A.7) and I.B.A.8) to "Within two (2) years of permit effective date"; and, Table I.B.A.9) and I.B.A.10) to "Within thirty (30) months of permit effective date".

Comment 7: Implementing reductions in runoff in this arid area could possibly reduce flows to the Rio Grande. These reduced flows could threaten endangered species in the area including the Rio Grande Silvery Minnow and the Southwest Flycatcher. Additional research and investigation is needed to determine the possible impacts reduced flows could have on the Rio Grande. The City requests the full duration of the permit term to study this issue and work with state and federal agencies such as the Office of the State Engineer and the U.S Fish & Wildlife Services to determine the necessary flows to meet compact requirements and/or support endangered species.

Response 7: Noted in the administrative record. These controls would be aimed primarily at changes in runoff associated with future development and would therefore have less impact on current discharge rates. Additionally, EPA formally consulted with the U.S. Fish and Wildlife Service (US FWS) regarding the draft permit requirements. The US FWS did not raise any concerns specific to the use of controls which mimic the pre-development hydrology of the previously undeveloped site. No changes are made to the final permit as a result of this comment.

Comment 8: The City does not currently agree with the suggested definition of runoff reduction stated in the permit in Table I.B item 9. The co-permittees would like to engage in a technical discussion of the potential runoff reduction possible in this area over the course of this permit cycle based on low annual rainfall; potentially intense localized storm events and very significant grades within the stormwater basin.

Response 8: Noted in the administrative record. See Response 6 above.

Comment 9: Comment in Table I.D.A.1 talks about illicit discharges into the sewer system. This should be clarified as the storm sewer system as opposed to the sanitary sewer system.

Response 9: EPA agrees. The final permit will change the term at Part I.C.5.e(i) and Part VI. Table I.E.A item 1 to stormwater system.

Comment 10: The City will prepare and deliver an initial ordinance to the City Council within six months of permit effective date. We respectfully request 2 additional years to adopt

and implement a comprehensive ordinance that incorporates additional testing, public outreach and funding requirements.

Response 10: Noted in the Administrative Record. The final permit will change the compliance deadline for implementation and enforcement of the predevelopment hydrology requirement site design standards at Table I.B to within thirty (30) months of permit effective date.

Comment 11: In Part III.G and Table IX requires testing of year-round streams that are tributary to the impaired waters. There are no year-round streams in the Albuquerque MS4. The City respectfully requests that this requirement be removed.

Response 11: Noted in the administrative record. Part III.G and Part VI. Table XI do not require testing of year-round streams. The requirement is for in-stream wet weather monitoring performed annually. No changes are made to the final permit as a result of this comment.

5. John Kelly, AMAFCA Executive Engineer

Comment 1: Page 3, Part I.A.1: The permit states that it covers all areas within the corporate boundary of the City of Albuquerque. However, AMAFCA has facilities which are located outside of the corporate bounds of the City of Albuquerque. Should these facilities which are located outside of the corporate boundary of the City of Albuquerque be included?

Response 1: After consideration of this comment and conversation with AMAFCA staff, the permit has been modified to include coverage of AMAFCA facilities in the Albuquerque urbanized area outside the Albuquerque corporate boundary.

Comment 2: Page 3, Part I.A.2: The permit states that permit authorizes discharges from all outfalls owned and/or operated by the permittees. This directly conflicts with the permit area, as AMAFCA owns and operates outfalls outside of the corporate boundary of the City of Albuquerque.

Response 2: Noted in the administrative record. The final permit will change Part I.A.2 to "This permit authorizes stormwater discharges to waters of the United States from all permittee MS4s owned and/or operated within the corporate boundary of the City of Albuquerque served by, or otherwise contributing to discharges from the MS4.

Comment 3: Page 3, Part I.A.3: The second sentence of this paragraph states in part "Any such discharge that are...." This should be changed to "Any such discharge that is...."

Response 3: EPA agrees. The final permit will change the term "are" to "is."

Comment 4: Page 3, Part I.A.3: The second sentence of this paragraph references Part I.D.5.e. However, this reference should be changed to Part I.C.5.e. in order to correspond with the proper section in the document.

Response 4: EPA agrees. The final permit will change the citation to Part I.C.5.e.

Comment 5: Page 3, Part I.A.3: This section requires the permittees to document the reason the listed discharges are not expected to be significant contributors of pollutants to the MS4. The documentation required by this section should be permitted for discharges as a category, rather than required for each individual discharge, i.e. the co-permittees should be allowed to submit a single explanation as to why rising groundwaters are not illicit discharges rather than upon each occurrence of groundwater rising.

Response 5: The EPA agrees and does not intend the permittees to submit documentation for each individual discharge occurrence, but rather an explanation why the discharges of these category types are not expected to be significant contributors of pollutants to the MS4. No changes are made to the final permit as a result of this comment.

Comment 6: Page 3, Part I.B.1: Although AMAFCA acknowledges that both EPA and NMED have authority to enforce any Tribal water quality standards, as a political subdivision of the State, the Tribe does not have jurisdiction over AMAFCA. The language should therefore be changed to reflect the exceedances which may be enforced by the State or EPA, which AMAFCA acknowledges includes those contained in and set forth by the Tribal standards. Accordingly, the reference to "exceedances of State and Tribal surface water quality standards" should be changed to "exceedances of any surface water quality standards mandated or enforced by the State or EPA". All additional references to Tribal standards throughout the document should likewise be changed.

Response 6: Noted in the administrative record. Section 401(a) of the CWA requires that all federally issued permits be certified by the State or Tribe in which the discharge occurs to ensure compliance with State and Tribal water quality standards. Likewise, EPA is required to ensure compliance with State and Tribal water quality standards for any State or Tribe with waters located proximally downstream of discharges. As such, EPA may take enforcement action at the request of States and/or Tribes under Section 401(a) if discharges from the MS4 do not comply with State and/or Tribal water quality standards. However, for clarification purposes, the final permit language will change to "...do not cause or contribute to exceedances of applicable surface water quality standards..."

Comment 7: Page 3, Part I.B.1: The first sentence of this paragraph references Part I.D. However, this reference should be changed to Part I.C in order to correspond with the proper section in the document.

Response 7: EPA agrees. The final permit will change the citation to Part I.C.

Comment 8: Page 4, Part I.B.1.c: The second sentence of this paragraph references Part I.D. However, this reference should be changed to Part I.C in order to correspond with the proper section in the document.

Response 8: EPA agrees. The final permit will change the citation to Part I.C.

Comment 9: Page 4, Part I.B.1.c: The second sentence of this paragraph states in relevant part "may provide information documenting exceedance of water quality standards...." This should be changed to state "may provide information documenting exceedances of water quality standards...."

Response 9: EPA agrees. The final permit will change the term "exceedance" to its plural form "exceedances."

Comment 10: Page 4, Part I.C.1: This section appears to create a third party beneficiary status for NMED or the Tribes who are not parties to this permit. Is it the intent of the permit to do so?

Response 10: Noted in the administrative record. See Response 6 above.

Comment 11: Page 4, Part I.B.1.d: The reference to "exceedances of State and Tribal dissolved oxygen water quality standards" should be changed to "exceedances of applicable dissolved oxygen water quality standards".

Response 11: Noted in the administrative record. The final permit will change the language to "...exceedances of applicable water quality standards..."

Comment 12: Page 4, Part I.B.1.d(i): The co-permittees are of the opinion that there are natural or man-made topographical and geographical formations which are contributing to reduced dissolved oxygen in the receiving waters of the Rio Grande. Accordingly, this section should read "Identify structural elements, natural or man-made topographical and geographical formations, or oxygen demanding pollutants contributing to reduced dissolved oxygen in the receiving waters of the Rio Grande."

Response 12: EPA acknowledges the potential that both, natural or man-made topographical and geographical formations may be the cause of reduced oxygen levels in the receiving waters of the Rio Grande. The final permit will change the language to "Identify structural elements, natural or man-made topographical and geographical formations, MS4 operation activities, or oxygen demanding pollutants contributing to reduced dissolved oxygen in the receiving waters of the Rio Grande."

Comment 13: Page 4, Part I.B.1.d(i): Due to the nature of the storms which affect the region, it is nearly impossible to collect dry weather data. The City of Albuquerque is situated in the

arid southwest region, with an annual storm season lasting no more than three (3) months. These storms are highly unpredictable in duration, location, and intensity, and result in significant precipitation in short intervals lasting no more than a couple of hours. As a result, dry weather discharges are nearly impossible to track in the region, as personnel are unable to anticipate where the storm will occur or how long it will last in order to acquire the necessary data. Permittees will strive to obtain data for dry weather discharges whenever practicable; however, permittees should not be required to provide this data as a condition of the permit due to the infeasibility of collecting this data. It should also be noted that there are relatively few dry weather discharges.

Response 13: Part I.B.1(d)(i) is intended to address contributions to exceedances of applicable water quality standards from MS4 discharges resulting from storm events and non-stormwater discharges during dry weather. To address dry weather non-stormwater discharges sampling storm runoff will be counter-productive. No changes are made to the final permit as a result of this comment.

Comment 14: Page 4, Part I.B.1.d(ii): The reference to "exceedances of State and Tribal water quality standards" should be changed to "exceedances of applicable water quality standards".

Response 14: Noted in the administrative record. See Response 6 above. The final permit language will be changed to "...cause or contribute to exceedances of applicable water quality standards..."

Comment 15: Page 4, Part I.B.1.e: The reference to "exceedances of State or Tribal water quality standards" should be changed to "exceedances of applicable water quality standards".

Response 15: Noted in the administrative record. See Response 6 above. The final permit language will be changed to "...cause or contribute to exceedances of applicable water quality standards..."

Comment 16: Page 4, Part I.B.1.f: The reference to "exceedances of State and Tribal temperature water quality standards" should be changed to "exceedances of applicable temperature water quality standards".

Response 16: Noted in the administrative record. See Response 6 above. The final permit language will be changed to "...cause or contribute to exceedances of applicable temperature water quality standards..."

Comment 17: Page 4, Part I.B.1.f.i: The second sentence of this paragraph states that both dry and wet weather discharges shall be addressed. However, as noted above, it is nearly impossible for AMAFCA to collect dry weather data, and there are relatively few dry weather discharges.

Response 17: Noted in the administrative record. Dry weather discharges refer to non-stormwater discharges in the dry season. No changes are made to the final permit as a result of this comment.

Comment 18: Page 4, Part I.B.1.f(ii): The reference to "exceedances of State or Tribal water quality standards" should be changed to "exceedances of applicable water quality standards".

Response 18: Noted in the administrative record. See Response 6 above. The final permit language will be changed to "...cause or contribute to exceedances of applicable water quality standards..."

Comment 19: Page 5, Part I.B.2: The reference to "not meeting applicable State or Tribal surface water quality standards" should be changed to "not meeting applicable water quality standards".

Response 19: Noted in the administrative record. See Response 6 above. The final permit language will be changed to "...not meeting applicable water quality standards."

Comment 20: Page 5, Part I.B.2.a: The first sentence of this paragraph references Part I.C.1. However, this reference should be changed to Part I.B.1 in order to correspond with the proper section in the document.

Response 20: EPA agrees. The final permit will change the citation to "...Part I.B.1 and I.C..." as suggested by NMED.

Comment 21: Page 5, Part I.B.2.c: As it is not clear that a bacteria control plan was required under the previous permit. Accordingly, the statement "the previous bacteria control plan required under the previous permit as necessary to comply..." should be changed to read "any previous bacteria control plan as necessary to comply...."

Response 21: Because EPA approved the new bacteria TMDL on June 30, 2010, the sentence in question will be removed from the final permit.

Comment 22: Page 6, Part I.C.2: Pursuant to the authority granted to it by the legislature, AMAFCA is without the legal capacity to implement any legal authority to control discharges. Any controls implemented by AMAFCA would be unenforceable. AMAFCA will cooperate and work with the co-permittees to address the requirements of this section.

Response 22: Permittees are expected to focus their programs on their portion of the MS4. Programs for highway departments, cities, special districts, universities, and etc. are expected to differ due to the nature of their jurisdictions (e.g. AMAFCA, UNM, and NMDOT are not expected to have many third party construction projects in their jurisdictions so their construction program would likely focus on their own activities, or those of their contractors, and a fully developed

program for controlling third party construction may not be needed). Therefore, permittees not authorized by the legislature to enact ordinances/regulations, issue permits, and/or enforce statutes or other legal mechanisms may develop internal procedures to control discharges from its own activities and enter into contracts/agreements with entities it contracts to perform activities/projects to control discharges. Additionally, permittees may coordinate via memorandum of understanding, cooperative agreements, or similar mechanisms (e.g. Joint Powers Agreement) with one another and/or other agencies that have the legal authority to prohibit these types of discharges. No changes are made to the final permit as a result of this comment.

Comment 23: Page 6, Part I.C.2.e: Notwithstanding AMAFCA's inability to enact legal authority to control discharges, AMAFCA is willing to enter into agreements with the other co-permittees pursuant to this provision.

Response 23: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 24: Page 6, Part I.C.3.b: Each of the co-permittees is without jurisdictional authority to implement control measures over certain requirements of this permit, which authority is vested with another co-permittee. Accordingly, the co-permittees request that in each such instance where a co-permittee is without legal authority to implement the control measure, that co-permittee be permitted to rely on the control measures implemented by another co-permittee. As such, a statement that "the co-permittee is without legal authority to implement the control measure" should be added to the list of circumstances under which a permittee may rely on another entity.

Response 24: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 25: Page 6, Part I.C.3.b(i)(2): As indicated above, AMAFCA is without the legal authority to implement control measures. Hence, AMAFCA has no option but to rely on the control measures implemented by the other entities.

Response 25: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 26: Page 6, Part I.C.3.b(i)(3): For clarification purposes, the term "or" should be included at the end of this provision.

Response 26: EPA agrees. The final permit will include the term "or" at the end of this provision.

Comment 27: Page 7, Part I.C.5: AMAFCA will coordinate and cooperate with any agencies as set forth in this section. However, AMAFCA is without the legal authority to implement any controls pursuant to this section.

Response 27: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 28: Page 7, Part I.C.5.a: AMAFCA does not have jurisdiction over construction sites, but AMAFCA will cooperate and work with the co-permittees to address the requirements of this section.

Response 28: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 29: Page 7, Part I. C.5.a: AMAFCA does not have the jurisdictional authority to regulate construction site stormwater Runoff Control. AMAFCA will compel construction site operators to comply with applicable regulations on projects in which AMAFCA is the contracting agency by contractual requirements.

Response 29: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 30: Page 7, Part I.C.5.a(i): AMAFCA does not have the jurisdictional authority to implement a program to control stormwater discharges from construction activities. AMAFCA will participate with the other co-permittees in updating the existing NPDES Stormwater Management Guidelines.

Response 30: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 31: Page 7, Part I.C.5.a(ii): AMAFCA also does not have the jurisdictional authority to enact an ordinance(s) or other appropriate legal authority mechanism to regulate construction site stormwater management.

Response 31: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 32: Page 7, Part I.C.5.a(iii): AMAFCA does not have the jurisdictional authority to review the site plans for private developments throughout the MS4 area.

Response 32: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 33: Page 7, Part I.C.5.a(iv): AMAFCA does not have the jurisdictional authority to develop an application process for private developments throughout the MS4 area.

Response 33: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 34: Pages 7-8, Part I.C.5.a(v)(1): AMAFCA does not have the jurisdictional authority to perform this task. However, AMAFCA will conduct regularly scheduled construction inspections of projects for which it is the contracting agency.

Response 34: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 35: Page 8, Part I.C.5.a(v)(2): AMAFCA does not have the jurisdictional authority to perform this task.

Response 35: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 36: Page 8, Part I.C.5.a(vi): AMAFCA does not have the jurisdictional authority to develop a site plan review program for private developments in the MS4 area. However, AMAFCA will maintain an education and training program for its design review staff.

Response 36: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 37: Page 8, Part I.C.5.a(vii): AMAFCA does not have the jurisdictional authority to perform this task.

Response 37: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comments 38 & 39: Page 8, Part I.C.5.b: AMAFCA does not have the jurisdictional authority to regulate post-construction stormwater management in new development and re-development. AMAFCA does not have jurisdiction over post-construction sites.

Response 38 & 39: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 40: Page 8, Part I.C.5.b: Based on the nature of the terrain and the type of storms which impact Albuquerque as an arid region, it is impossible for the permittees to mimic pre-development hydrology without threatening the health and welfare of the public. Pre-development hydrology resulted in significant flooding during storm events, which resulted in the creation of flood control facilities to collect and divert storm waters. The terrain in this region is not conducive to absorption of storm precipitation and the hydrology naturally leads to floods throughout the area.

Mimicking pre-development hydrology, rather than providing for flood control, would lead to an unintended and potentially disastrous result.

Response 40: EPA recognizes that the permittees may be subject to additional state or local flood control requirements. The intent of "pre-development" hydrology is to prevent increases due to development. See Response 6 above to David S. Campbell, City of Albuquerque Chief Administrative Officer.

Comment 41: Page 8, Part I.C.5.b(i): AMAFCA does not have the jurisdictional authority to perform this task.

Response 41: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 42: Page 8, Part I.C.5.b(ii): AMAFCA does not have the jurisdictional authority to enact an ordinance(s) or other appropriate legal authority mechanism.

Response 42: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 43: Page 8, Part I.C.5.b(iii): AMAFCA will coordinate with the co-permittees to complete the requirements of this task; however, AMAFCA is without jurisdictional authority to modify any documents or enforce any of the requirements of this provision.

Response 43: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 44: Page 9, Part I.C.5.b(iv): AMAFCA does not have the jurisdictional authority to perform the tasks set forth in the first paragraph of this section.

Response 44: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 45: Page 9, Part I.C.5.b(iv): AMAFCA does not have the jurisdictional authority to perform this tasks set forth in the second paragraph of this section.

Response 45: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 46: Page 9, Part I.C.5.b(iv)(a): AMAFCA does not have the jurisdictional authority to perform this task.

Response 46: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 47: Page 9, Part I.C.5.b(iv)(b): AMAFCA does not have the jurisdictional authority to perform this task.

Response 47: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 48: Page 9, Part I.C.5.b(iv)(c): The co-permittees anticipate that the City of Albuquerque's Storm Water Quality Ordinance would address alternative the approaches requested herein.

Response 48: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 49: Page 9, Part I.C.5.b(iv)(c): AMAFCA will assist the co-permittees and the EPA in the effort to identify alternative approaches, as requested in this section.

Response 49: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 50: Page 9, Part I.C.5.b(v): AMAFCA does not have the jurisdictional authority to perform this task.

Response 50: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 51: Page 9, Part I.C.5.b(vi): AMAFCA will assist the MS4 co-permittees in determination of IA and DCIA through utilization of GIS technology.

Response 51: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 52: Page 10, Part I.C.5.b(vii): AMAFCA will inventory and priority rank its facilities for retrofits if applicable.

Response 52: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 53: Page 10, Part I.C.5.b(viii): AMAFCA does not have the jurisdictional authority to perform this task.

Response 53: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 54: Page 10, Part I.C.5.b(viii): AMAFCA will incorporate the requirements of this provision into all of its applicable policies governing its operations. However, AMAFCA is without jurisdictional authority over all other requirements contemplated by this provision. In addition, as AMAFCA's role is strictly that of a flood control authority charged with the operation and maintenance of storm water and flood control facilities, AMAFCA does not engage in any of these listed activities.

Response 54: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 55: Pages 10-11, Part I.C.5.b(ix): AMAFCA does not have the jurisdictional authority to perform this task.

Response 55: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 56: Page 11, Part I.C.5.b(x): AMAFCA will maintain an education and training program for its relevant staff internally. AMAFCA will also coordinate with the co-permittees to complete the requirements of this task; however, AMAFCA is without jurisdictional authority over the requirements of this provision.

Response 56: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 57: Page 11, Part I.C.5.b(xi): AMAFCA does not have the jurisdictional authority to perform this task.

Response 57: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 58: Page 11, Part I.C.5.b(xi): AMAFCA will coordinate with the co-permittees to complete the requirements of this task; however, AMAFCA is without jurisdictional authority over the requirements of this provision.

Response 58: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 59: Page 11, Part I.C.5.c: AMAFCA will ensure all of its operations are addressed under this provision. However, AMAFCA is without jurisdictional authority over all other entities which may also be subject to the requirements contemplated by this provision.

Response 59: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 60: Page 11, Part I.C.5.c(ii): The facilities which are owned or operated by AMAFCA and which fall within these categories are limited. AMAFCA will ensure that all of its facilities which fall into any of these categories comply with the requirements of this section, but it is without jurisdictional authority to ensure any other facilities listed herein comply with the requirements of this provision.

Response 60: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 61: Page 11, Part I.C.5.c(ii)(1)-(5): AMAFCA does not engage in these activities and is without jurisdictional authority to ensure any other entities comply with the requirements of this provision. To the extent AMAFCA is able to comply with the provisions contained herein, it will do so.

Response 61: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 62: Page 12, Part I.C.5.c(iii)(1): The facilities which are owned or operated by AMAFCA which fall within these categories are limited. AMAFCA will ensure that all of its facilities which fall into any of these categories comply with the requirements of this section, but it is without jurisdictional authority to ensure any other facilities listed herein comply with the requirements of this provision.

Response 62: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 63: Page 12, Part I.C.5.c(v)(1): The reference to "control use and applications rates according to applicable National, State, and Tribal requirements" should be changed to "control use and application rates according to all applicable requirements."

Response 63: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...according to applicable requirements;.."

Comment 64: Page 13, Part I.C.5.d: AMAFCA is without jurisdictional authority over the requirements of this provision. As AMAFCA's role is strictly that of a flood control authority charged with the operation and maintenance of facilities to convey storm water, AMAFCA does not have the authority to address any of the activities required herein.

Response 64: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 65: Page 13, Part I.C.5.d(i): AMAFCA does not have the jurisdictional authority to perform this task.

Response 65: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 66: Page 13, Part I.C.5.d(i)(1): AMAFCA does not have the jurisdictional authority to perform this task.

Response 66: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 67: Page 13, Part I.C.5.d(i)(2): AMAFCA does not have the jurisdictional authority to perform this task.

Response 67: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 68: Page 13, Part I.C.5.d(i)(3): AMAFCA does not have the jurisdictional authority to perform this task.

Response 68: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 69: Page 13, Part I.C.5.d(ii): AMAFCA does not have the jurisdictional authority to perform this task.

Response 69: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 70: Page 13, Part I.C.5.e: AMAFCA is without jurisdictional authority to comply with the requirements of this section. As AMAFCA's role is strictly that of a flood control authority charged with the operation and maintenance of facilities to convey storm water, AMAFCA does not have the authority to address any of the activities required herein. AMAFCA will ensure that any illicit discharges and improper disposal attributable to its operations are addressed, however, it is unable to enforce any restrictions against any other person or entity who may also be subject to the requirements as contemplated by this provision.

Response 70: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 71: Page 13, Part I.C.5.e: AMAFCA will perform this task for its facilities only.

Response 71: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 72: Page 14, Part I.C.5.e(i): AMAFCA is without jurisdictional authority to prohibit the contemplated actions set forth in the first paragraph through ordinance or regulatory mechanism.

Response 72: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 73: Page 14, Part I.C.5.e(i): As there may potentially be a large number of non-significant and/or non-severe discharges which must be addressed at any given time, it may prove infeasible for the co-permittees to respond to all suspected discharges within forty-eight (48) hours. While the co-permittees will strive to respond to all illicit discharges within this forty-eight (48) hour time period, the permit should be modified accordingly. Therefore, In the second paragraph , the language "the permittee shall investigate the suspected illicit discharge within forty-eight (48) hours eliminate such discharges as expeditiously as possible; and, require immediate cessation of illicit discharges..." should be changed to "the permittee shall investigate suspected significant and/or severe illicit discharges within forty-eight (48) hours and all other suspected illicit discharges at the earliest time practicable. The permittee shall eliminate such discharges as expeditiously as possible and require immediate cessation of illicit discharges..."

Response 73: EPA acknowledges that the degree of significance and/or severity of an illicit discharge may vary depending on pollutant, location, and etc. However, all illicit discharges washed into a downstream waterbody by precipitation have a potential of impacting water quality. As it is the purpose of the illicit detection and improper disposal program element to detect and eliminate illicit discharges from entering the MS4, EPA will change the final permit to read, "Upon detection (including receipt of notification by any party of an illicit discharge), the permittee shall investigate suspected significant and/or severe illicit discharges within forty-eight (48) hours and all other suspected illicit discharges at the earliest time practicable."

Comment 74: Page 14, Part I.C.5.e(v)(1): AMAFCA is without jurisdictional authority to prohibit the contemplated actions through ordinance or regulatory mechanism.

Response 74: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 75: Page 14, Part I.C.5.e(v)(2): As indicated above, the reach of the MS4 is confusing as AMAFCA has facilities outside of the municipal limits of the City of Albuquerque.

Response 75: Noted in the administrative record. See Response 1 above. No changes are made to the final permit as a result of this comment.

Comment 76: Page 15, Part I.C.5.e(v)(3): AMAFCA is without jurisdictional authority to implement the measures and activities contemplated herein.

Response 76: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 77: Page 16, Part I.C.5.g: AMAFCA is without jurisdictional authority to implement any legal requirements for private entities as contemplated herein.

Response 77: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 78: Page 16, Part I.C.5.h(ii): AMAFCA is without jurisdictional authority to implement any legal requirements for private entities as contemplated herein.

Response 78: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 79: Page 18, Part I.C.6.a(ii): AMAFCA will address in the annual report the effectiveness of its SWMP and suggestions for modifications. However, it should be noted that AMAFCA is without jurisdictional authority to implement any compliance or control measures for any other SWMPs in the MS4.

Response 79: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 80: Page 18, Part I.C.6.c: A minimum of one (1) year should be granted under this provision based on the number of co-permittees required to develop and approve any proposed modifications.

Response 80: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 81: Page 1, Part III.A.1.c: This section should be labeled paragraph 'c'. See Part V, Section D for reference to this section as paragraph c.

Response 81: EPA agrees. This paragraph will be labeled as paragraph c in the final permit.

Comment 82: Page 1, Part III.A.2.e: The first sentence of this paragraph references Part III.G. However, this reference should be changed to Part III.J in order to correspond with the proper section in the document.

Response 82: EPA agrees. The final permit will change the citation to Part III.J.

Comment 83: Page 1, Part III.A.3: Due to the nature of the storms which affect the region, it is nearly impossible to collect wet weather data. The City of Albuquerque is situated in the arid southwest region, with an annual storm season lasting no more than three (3) months. These storms are highly unpredictable in duration, location, and intensity, and result in significant precipitation in short intervals lasting no more than a couple of hours. As a result, wet weather discharges are nearly impossible to track in the region, as personnel are unable to anticipate where the storm will occur or how long it will last in order to acquire the necessary data. Permittees will strive to obtain data for wet weather discharges whenever practicable; however, permittees should not be required to provide this data as a condition of the permit due to the infeasibility of collecting this data. It should also be noted that there are relatively few dry weather discharges.

Response 83: Noted in the administrative record. See Response 13 above. No changes are made to the final permit as a result of this comment.

Comment 84: Page 3, Part III.C.1: AMAFCA does not have the jurisdictional authority to perform this task.

Response 84: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 85: Page 4, Part III.D: The final sentence in this paragraph should be modified to read: "Once initiated, all toxicity tests must be completed unless specific authority has been granted by EPA or NMED, which authority shall be presumed granted in the event of force majeure or any other reason which could not have reasonably been anticipated or controlled by permittee. Budget constraints shall be considered beyond permittee's control if the costs to complete the test have increased due to another person or entity's actions, and paying the increased costs will cause the permittee to exceed its allotted budget."

Response 85: It is the permittee's obligation to provide sufficient resources to comply with the permit. Specific instances of non-compliance due to budgetary concerns should be discussed with EPA's enforcement personnel. No changes are made to the final permit as a result of this comment.

Comment 86: Page 4, Part III.D.1.c: This section references Part III.E. However, this reference should be changed to Part III.H in order to correspond with the proper section in the document.

Response 86: EPA agrees. The final permit will change the citation to Part III. H.

Comment 87: Page 4, Part III.D.1.d: This section references Part III.G. However, this reference should be changed to Part III.J. in order to correspond with the proper section in the document.

Response 87: EPA agrees. The final permit will change the citation to Part III.J.

Comment 88: Page 6, Part III.E: Due to the nature of the storms which affect the region, it is nearly impossible to collect wet weather data. The City of Albuquerque is situated in the arid southwest region, with an annual storm season lasting no more than three (3) months. These storms are highly unpredictable in duration, location, and intensity, and result in significant precipitation in short intervals lasting no more than a couple of hours. As a result, wet weather discharges are nearly impossible to track in the region, as personnel are unable to anticipate where the storm will occur or how long it will last in order to acquire the necessary data. Permittees will strive to obtain data for wet weather discharges whenever practicable, however, permittees should not be required to provide this data as a condition of the permit due to the infeasibility of collecting this data. It should also be noted that there are relatively few dry weather discharges.

Response 88: Noted in the administrative record. See Response 13 above. No changes are made to the final permit as a result of this comment.

Comment 89: Page 6, Part III.E.2: Given the fact the entire MS4 drainage network is ephemeral, coupled with the short duration, high intensity nature of our storm events, this requirement will be exceedingly difficult to comply with.

Response 89: Noted in the administrative record. Assessment of pollutant levels is necessary to evaluate water quality impact and progress toward measureable goals. No changes are made to the final permit as a result of this comment.

Comment 90: Page 6, Part III.E.3: In lieu of testing utilizing conventional laboratory analysis for the listed parameters BOD₅, sediment or a parameter addressing sediment (e.g., TSS or turbidity), *E. coli*, Oil and Grease, and nutrients, testing in the upper reaches of the watershed for wet/dry weather screening would be conducted using EPA approved, handheld devices such as multiparameter meters or other technologies that provide instantaneous on-site results to determine pH, dissolved oxygen, conductivity, TDS, TSS, and temperature.

Response 90: EPA agrees that multi-parameter meters that meet design specifications of the approved analytical method(s) found at 40 CFR 136 are available and may be utilized for parameter monitoring given necessary QA/QC is performed and documented. However, approved methods for instantaneous measurements are not available for BOD₅, *E. coli*, Oil and Grease, and some nutrients. No changes are made to the final permit as a result of this comment.

Comment 91: Page 7, Part III.F: Due to the nature of the storms which affect the region, it is nearly impossible to collect dry weather data. The City of Albuquerque is situated in the arid southwest region, with an annual storm season lasting no more than three (3) months. These storms are highly unpredictable in duration, location, and intensity, and result in significant precipitation in short intervals lasting no more than a couple of hours. As a result, dry weather discharges are nearly impossible to track in the region, as personnel are unable to anticipate where the storm will occur or how long it will last in order to acquire the necessary data. Permittees will strive to obtain data for dry weather discharges whenever practicable; however, permittees should not be required to provide this data as a condition of the permit due to the infeasibility of collecting this data. It should also be noted that there are relatively few dry weather discharges.

Response 91: Noted in the administrative record. See Response 13 above. No changes are made to the final permit as a result of this comment.

Comment 92: Page 7, Part III.F.1: The area typically sees no stream flow during the dry season. Unless, we are allowed to sample sediment or the Rio Grande River which has a perennial flow, the dry weather screening requirement is not appropriate for or applicable to the arid winter climate in the Albuquerque area. In other words, dry weather screening as set forth herein is not appropriate to this region. An alternate plan for dry weather screening in the Albuquerque will be suggested in the SWMP.

Response 92: Noted in the administrative record. See Response 13 above. No changes are made to the final permit as a result of this comment.

Comment 93: Page 7, Part III.F.2: Given the fact the entire MS4 drainage network is ephemeral, coupled with the short duration, high intensity nature of our storm events, this requirement will be exceedingly difficult to comply with.

Response 93: Noted in the administrative record. See Response 89 above. No changes are made to the final permit as a result of this comment.

Comment 94: Page 7, Part III.F.5: Given the fact the entire MS4 drainage network is ephemeral, coupled with the short duration, high intensity nature of our storm events, this requirement will be exceedingly difficult to comply with.

Response 94: Noted in the administrative record. See Response 89 above. No changes are made to the final permit as a result of this comment.

Comment 95: Page 7, Part III.G.1: It is unclear whether this section is requiring testing for impaired water pollutant(s) of concern or for all constituents.

Response 95: EPA agrees. The final permit will change the Part III.G.1 requirement to "shall perform annual in-stream wet weather monitoring for all constituents listed at Part VI

Tables XII.A and XII.B at all locations tributary to impaired waters (at the point where they enter the Rio Grande and if originating outside the MS4, where it enters the MS4)..."

Comment 96: Page 7-8, Part III.G.4: Given the fact the entire MS4 drainage network is ephemeral, coupled with the short duration, high intensity nature of our storm events, this requirement will be exceedingly difficult to comply with.

Response 96: Noted in the administrative record. See Response 89 above. No changes are made to the final permit as a result of this comment.

Comment 97: Page 1, Part IV.B: This section enumerates the applicable criminal penalties for violations. For consistency, all of the dollar figures should be followed by a decimal point and two zeros (.00), indicating that these figures are whole dollar amounts.

Response 97: Noted in the administrative record. Draft permit language for this section was obtained from 40 CFR §122.41. No changes are made to the final permit as a result of this comment.

Comment 98: Page 3, Part IV.M.1: The fourth sentence of this paragraph references Part III.G. However, this reference should be changed to Part III.J in order to correspond with the proper section in the document.

Response 98: EPA agrees. The final permit will change the citation to Part III.J.

Comment 99: Page 4, Part IV.R: The first sentence of this paragraph should be changed from "upon the presentation of credentials and other documents..." to "upon reasonable notice and upon the presentation of credentials and other documents..."

Response 99: Noted in the administrative record. Draft permit language for this section was obtained from 40 CFR §122.41. No changes are made to the final permit as a result of this comment.

Comment 100: Page 4, Part IV.S: The language "unless agreed to by EPA" should be added to the end of the second sentence.

Response 100: Noted in the administrative record. Draft permit language for this section was obtained from 40 CFR §122.41. No changes are made to the final permit as a result of this comment.

Comment 101: Page 1, Part V.A.2: The reference to "changes in State, Tribal, or Federal statutes" should be changed to "changes in applicable statutes".

Response 101: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...applicable water quality standards, statutes..."

Comment 102: Page 1, Part V.C: The last sentence of this paragraph references Part I.D.6. However, this reference should be changed to Part I.C.6 in order to correspond with the proper section in the document.

Response 102: EPA agrees. The final permit will change the citation to Part I.C.6.

Comment 103: Page 1, Part VI.A: The first and last sentences of this paragraph reference Tables I.I. and I.J. However, there are no Tables I.I or I.J included in the permit. Accordingly, the references to Tables I.I. and I.J. should be deleted.

Response 103: EPA agrees. The final permit will delete Tables I.I and I.J from Part VI.A as well as include additional tables resulting from modifications made in response to comments.

Comment 104: Page 1, Part VI.C: This paragraph references Part III.G. However, Part III.G does not correspond to the intent of this section. While it is unclear which section is actually intended to be referenced, it appears Part III.H may be the intended referenced section. Therefore, the reference in this paragraph should be changed to Part III.H in order to correspond with the proper section in the document.

Response 104: EPA agrees. The final permit will change the citation to Part III.J.

Comment 105: Page 2, Part VI, Table I.A.A(1)-(8): AMAFCA does not have the jurisdictional authority to perform this activity.

Response 105: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 106: Page 2, Part VI, Table I.A.A(8): The permittees will begin updating the Guidelines immediately. However, the new list of required BMPs is scheduled to be released in 2012. Accordingly, the Guidelines cannot be completed properly until after this 2012 release date in order to incorporate these new BMPs into the Guidelines. The permittees anticipate the final updated Guidelines will be completed in 2013.

Response 106: EPA agrees. EPA will change the final permit to "Within six (6) months of issuance of the new Construction General Permit" for this requirement's compliance due date.

Comment 107: Page 2, Part VI, Table I.A.A(9)-(10): AMAFCA does not have the jurisdictional authority to perform this activity. AMAFCA can and will continue to perform inspections of its facilities.

Response 107: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 108: Page 3, Part VI, Table I.B.A(1)-(3): AMAFCA does not have the jurisdictional authority to perform this activity.

Response 108: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 109: Page 3, Part VI, Table I.B.A(1)-(3): Six (6) months is not feasible for the requirements of this section. The co-permittees request that the deadline to complete this section be extended eighteen (18) months.

Response 109: Noted in the Administrative Record. The final permit will change the compliance deadline for implementation of the program elements listed at Table I.B.A.1) through I.B.A.3) to within one (1) year of permit effective date.

Comment 110: Page 3, Part VI, Table I.B.A(5): AMAFCA does not have jurisdictional authority over these activities. However, AMAFCA will cooperate and work with the other co-permittees to the extent possible to achieve this result.

Response 110: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 111: Page 3, Part VI, Table I.B.A(9)-(10): AMAFCA does not have the jurisdictional authority to perform this activity.

Response 111: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 112: Page 4, Part VI, Table I.B.A(11)-(16): AMAFCA does not have the jurisdictional authority to perform this activity.

Response 112: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 113: Page 4, Part VI, Table I.C.A: AMAFCA does not have the jurisdictional authority to perform this activity.

Response 113: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 114: Page 4, Part VI, Table I.D.A: AMAFCA does not have the jurisdictional authority to perform this activity.

Response 114: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 115: Page 4, Part VI, Table I.D.A(4): The first clause in this sentence should be changed to read: "investigation of suspected significant/severe illicit discharges within forty-eight (48) hours of detection and all other discharges as soon as practicable;"

Response 115: Noted in the administrative record. See Response 73 above.

Comment 116: Page 5, Part VI, Table I.D.B(1)-(4): AMAFCA does not have the jurisdictional authority to perform this activity.

Response 116: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 117: Page 5, Part VI, Table I.D.B(5)-(6): AMAFCA does not have the jurisdictional authority to perform this activity.

Response 117: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 118: Page 5, Part VI, Table I.D.B(7)-(8): AMAFCA does not have the jurisdictional authority to perform this activity.

Response 118: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 119: Page 5, Part VI, Table I.D.B(9)-(12): AMAFCA does not have the jurisdictional authority to perform this activity.

Response 119: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 120: Page 6, Part VI, Table I.E.A: The first sentence of this section references Part I.C.5.h. However, this should be changed to Part I.C.5.f in order to correspond with the proper section in the document.

Response 120: EPA agrees. The final permit will change the citation at Part VI, Table I.F.A to Part I.C.5.f.

Comment 121: Page 6, Part VI, Table I.F.A: The first sentence of this section references Part I.C.5.i. However, this should be changed to Part I.C.5.g in order to correspond with the proper section in the document.

Response 121: EPA agrees. The final permit will change the citation at Part VI, Table I.G.A to Part I.C.5.g.

Comment 122: Page 6, Part VI, Table I.F.A: AMAFCA does not have the jurisdictional authority to perform this activity.

Response 122: Noted in the administrative record. See Response 22 above. No changes are made to the final permit as a result of this comment.

Comment 123: Page 6, Part VI, Table I.G.A: The first sentence of this section references Part I.C.5.k. However, this should be changed to Part I.C.5.i in order to correspond with the proper section in the document.

Response 123: EPA agrees. The final permit will change the citation at Part VI, Table I.H.A to Part I.C.5.i.

Comment 124: Page 6, Part VI, Table I.G.A(2): This section references Part I.C.5.k(v)(5). However, this should be changed to Part I.C.5.i(v)(5) in order to correspond with the proper section in the document.

Response 124: EPA agrees. The final permit will change the citation at Part VI, Table I.H.A.2) to Part I.C.5.i(v)(5).

Comment 125: Page 7, Part VI, Table I.H.A: This section references Part I.C.5.l. However, this should be changed to Part I.C.5.j in order to correspond with the proper section in the document.

Response 125: EPA agrees. The final permit will change the citation at Part VI, Table I.I.A to Part I.C.5.j.

Comment 126: Page 11, Part VI, Table III.A: The reference to "exceedances of State and Tribal dissolved oxygen water quality standards" should be changed to "exceedances of applicable dissolved oxygen water quality standards".

Response 126: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable dissolved oxygen..."

Comment 127: Page 11, Part VI, Table III.A: The second sentence of this paragraph references Part I.C.1.d. However, this should be changed to Part I.B.1.d in order to correspond with the proper section in the document.

Response 127: EPA agrees. The final permit will change the citation to Part I.B.1.d.

Comment 128: Page 11, Part VI, Table III.B(2): The reference to “exceedances of State and Tribal dissolved oxygen water quality standards” should be changed to “exceedances of applicable dissolved oxygen water quality standards”.

Response 128: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable dissolved oxygen...”

Comment 129: Page 11, Part VI, Table III.C(1)(i): The reference to “exceedances of State and Tribal dissolved oxygen water quality standards” should be changed to “exceedances of applicable dissolved oxygen water quality standards”.

Response 129: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable dissolved oxygen...”

Comment 130: Page 11, Part VI, Table III.C(1)(iii): The reference to “exceedances of State and Tribal dissolved oxygen water quality standards” should be changed to “exceedances of applicable dissolved oxygen water quality standards”.

Response 130: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable dissolved oxygen...”

Comment 131: Page 11, Part VI, Table III.C(2)(ii): The reference to “exceedances of State and Tribal dissolved oxygen water quality standards” should be changed to “exceedances of applicable dissolved oxygen water quality standards”.

Response 131: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable dissolved oxygen...”

Comment 132: Page 11, Part VI, Table III.C(2)(iv): The reference to “exceedances of State and Tribal dissolved oxygen water quality standards” should be changed to “exceedances of applicable dissolved oxygen water quality standards”.

Response 132: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable dissolved oxygen...”

Comment 133: Page 12, Part VI, Table IV: The co-permittees are working diligently to ensure these timelines are met. However, as NMED approval is required on the studies required hereunder, the co-permittees cannot guarantee these deadlines will be met as a result of any delay in processing through NMED. Barring any delays once the test results have been made available to NMED, the co-permittees anticipate that these deadlines will be met.

Response 133: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 134: Page 12, Part VI, Table IV.A(1)(iv): The first reference to “exceedances of State or Tribal water quality standards” should be changed to “exceedances of applicable water quality standards”.

Response 134: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable water quality standards...”

Comment 135: Page 12, Part VI, Table IV.A(1)(iv): The second reference to “exceedances of State or Tribal water quality standards” should be changed to “exceedances of applicable water quality standards”.

Response 135: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable water quality standards...”

Comment 136: Page 12, Part VI, Table IV.A(2)(i): The reference to “exceedances of State or Tribal water quality standards” should be changed to “exceedances of applicable water quality standards”.

Response 136: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable water quality standards...”

Comment 137: Page 12, Part VI, Table IV.A(2)(iii): The reference to “exceedances of State or Tribal water quality standards” should be changed to “exceedances of applicable water quality standards”.

Response 137: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable water quality standards...”

Comment 138: Page 12, Part VI, Table IV.B: The reference to “exceedances of State or Tribal water quality standards” should be changed to “exceedances of applicable water quality standards”.

Response 138: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable water quality standards...”

Comment 139: Page 12, Part VI, Table IV.B(1)(i): The reference to “exceedances of State or Tribal water quality standards” should be changed to “exceedances of applicable water quality standards”.

Response 139: Noted in the administrative record. See Response 6 above. The final permit will change the language to “...exceedances of applicable water quality standards...”

Comment 140: Page 12, Part VI, Table IV.B(1)(iii): The reference to "exceedances of State or Tribal water quality standards" should be changed to "exceedances of applicable water quality standards".

Response 140: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable water quality standards..."

Comment 141: Page 12, Part VI, Table IV.C(i): The reference to "exceedances of State and Tribal water quality standards" should be changed to "exceedances of applicable water quality standards".

Response 141: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable water quality standards..."

Comment 142: Page 13, Part VI, Table IV.C(iii): The reference to "exceedances of State or Tribal water quality standards" should be changed to "exceedances of applicable water quality standards".

Response 142: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable water quality standards..."

Comment 143: Page 13, Part VI, Table V.A: The reference to "exceedances of State and Tribal temperature water quality standards" should be changed to "exceedances of applicable temperature water quality standards".

Response 143: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable water quality standards..."

Comment 144: Page 13, Part VI, Table V.A: The reference to Part I.C.1.d. should be changed to Part I.B.1.f in order to correspond with the proper section of the document.

Response 144: EPA agrees. The final permit will change the citation to Part I.B.1.f.

Comment 145: Page 13, Part VI, Table V.B(2): The reference to "exceedances of State and Tribal temperature water quality standards" should be changed to "exceedances of applicable temperature water quality standards".

Response 145: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable temperature water quality standards..."

Comment 146: Page 13, Part VI, Table V.C(1): The numbered list in this section should be comprised of numbers i, ii, iii, and iv, rather than numbers v, vi, vii, and viii.

Response 146: EPA agrees. The final permit will change the numbered list to i - iv.

Comment 147: Page 13, Part VI, Table V.C(1)(i): The reference to "exceedances of State and Tribal temperature water quality standards" should be changed to "exceedances of applicable temperature water quality standards". Please note, this comment is referring to what has been renumbered Page 13, Part VI, Table V.C(1)(i) pursuant to these comments.

Response 147: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of temperature applicable water quality standards..."

Comment 148: Page 13, Part VI, Table V.C(1)(iii): The reference to "exceedances of State and Tribal temperature water quality standards" should be changed to "exceedances of applicable temperature water quality standards". Please note, this comment is referring to what has been renumbered Page 13, Part VI, Table V.C(1)(iii) pursuant to these comments.

Response 148: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable temperature water quality standards..."

Comment 149: Page 13, Part VI, Table V.C(2): The numbered list in this section should be comprised of numbers i, ii, iii, and iv rather than numbers vi, vii, viii, ix, and x.

Response 149: EPA agrees. The final permit will change the numbered list to i - v.

Comment 150: Page 13, Part VI, Table V.C(2)(ii): The reference to "exceedances of State and Tribal temperature water quality standards" should be changed to "exceedances of applicable temperature water quality standards". Please note, this comment is referring to what has been renumbered Page 13, Part VI, Table V.C(2)(ii) pursuant to these comments.

Response 150: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable temperature water quality standards..."

Comment 151: Page 13, Part VI, Table V.C(2)(iv): The reference to "exceedances of State and Tribal temperature water quality standards" should be changed to "exceedances of applicable temperature water quality standards". Please note, this comment is referring to what has been renumbered Page 13, Part VI, Table V.C(2)(iv) pursuant to these comments.

Response 151: Noted in the administrative record. See Response 6 above. The final permit will change the language to "...exceedances of applicable temperature water quality standards..."

Comment 152: Page 14, Part VI, Table VI.G(2): The reference to Part III.G. should be changed to Part III.J in order to correspond with the proper document section.

Response 152: EPA agrees. The final permit will change the citation to Part III.J.

Comment 153: Page 15, Part VI, Table VII: Given the fact the entire MS4 drainage network is ephemeral, coupled with the short duration, high intensity nature of our storm events, this requirement will be exceedingly difficult to comply with.

Response 153: Noted in the administrative record. See Response 89 above. No changes are made to the final permit as a result of this comment.

Comment 154: Page 15, Part VI, Table VII: AMAFCA will make every effort to comply with the requirements of this section. However, it should be noted that compliance may not be feasible or possible based on the nature of the storms affecting this region.

Response 154: Noted in the administrative record. See Response 89 above. No changes are made to the final permit as a result of this comment.

Comment 155: Page 15, Part VI, Table VIII: Given the fact the entire MS4 drainage network is ephemeral, coupled with the short duration, high intensity nature of our storm events, this requirement will be exceedingly difficult to comply with.

Response 155: Noted in the administrative record. See Response 89 above. No changes are made to the final permit as a result of this comment.

Comment 156: Page 16, Part VI, Table IX: There are no tributary streams running into the Rio Grande River in the area which is covered under this permit.

Response 156: Noted in the administrative record. See Response 95 above for changes made to the final permit as a result of this comment.

Comment 157: Page 16, Part VI, Table IX.A(1): For clarification, is this the same requirement as the wet weather screening requirement? If so, this is outside of AMAFCA's jurisdiction and therefore AMAFCA cannot sample upstream of the MS4.

Response 157: Although similar to the wet weather screening requirements for the MS4, this requirement is specific to impaired waters which are receiving wet weather discharges from the MS4. Permittees may coordinate via memorandum of understanding, cooperative agreements, or similar mechanisms (e.g. Joint Powers Agreement) with one another to designate joint/individual co-permittee responsibilities. No changes are made to the final permit as a result of this comment.

Comment 158: Page 16, Part VI, Table IX.A(2): For clarification, is this the same requirement as the wet weather screening requirement? If so, this is outside of AMAFCA's jurisdiction and therefore AMAFCA cannot sample upstream of the MS4.

Response 158: Noted in the administrative record. See Response 157 above. No changes are made to the final permit as a result of this comment.

Comment 159: Page 19, Part VI, Table X.B: Many of the parameters listed in Table X.B have been monitored for many years and most have been found to have very low concentrations that are far below thresholds considered deleterious to the environment. Continuing to monitor for these parameters especially when EPA is requiring additional monitoring through this new permit will result in significant additional costs to the co-permittees in this time of economic hardship. AMAFCA would like to request that in one (1) year of the effective date of this permit, the MS4 will submit to EPA the historic water quality data (QA/QC) for the Albuquerque area with recommendations for removing or lowering the frequency of testing for certain parameters on the list. Only those pollutants known to be a potential threat from past historical testing be monitored on a regular basis. Others would not be monitored or monitored on a less frequent basis.

Response 159: Noted in the administrative record. On June 2, 2011, a teleconference, for which all co-permittees were invited to participate, was held with representatives of NMED, AMAFCA and UNM to discuss monitoring requirements proposed in the draft permit. During this call, AMAFCA representatives explained that although several of the parameters being monitored had not detected significant concentrations of pollutants, removing these parameters from the monitoring contract yielded a negligible cost savings and they intended to continue monitoring the non-detected parameters. Yet, as requested by the co-permittees in a letter dated August 1, 2011, EPA will reduce the representative wet weather monitoring frequency at Part VI Tables XII.A and XII.B of the final permit to one event per wet season instead of two events per wet season to ensure adequate resources are available for the 24 PCB sediment samples and whole water samples from each monitoring location during storm events for PCB analysis.

The co-permittees also requested removal of the acute fish toxicity testing in this letter. Toxicity monitoring is necessary to support implementation of the Biological Opinion as well as future PCB and DO remedial action. No changes are made to the final permit with regards to toxicity monitoring.

6. Gary L. J. Giron, New Mexico Department of Transportation

Comment 1: In Part IC "Stormwater management Program" Section 3 "Shared Responsibility" the four partners will be preparing a Joint Powers Agreement that will set forth primary responsibilities of each partner for various compliance issues.

Response 1: Noted in the administrative record. The final permit will identify the Joint Powers Agreement in Part I.C.3.

Comment 2: In Part I.C.5.a. the NMDOT questions the requirement that co-permittees coordinate with all departments, ... to "ensure that the construction stormwater runoff control

program controls or eliminates erosion and maintains sediment on site.” The DOT request clarification regarding EPA’s goals for the DOT with regards to maintaining sediment on site.

Response 2: EPA expects each of the co-permittees to implement the elements listed in this section of the permit to control construction-related stormwater discharges which have the potential to cause water quality impacts such as sedimentation and erosion. NMDOT’s role could be expected to those construction activities by or authorized by NMDOT within their rights-of-way. No changes are made to the final permit as a result of this comment.

Comment 3: In Part I.C.5.a.(i) and Table I.A, there is a requirement to update the “NPDES Stormwater Management Guidelines for Construction and Industrial Activities Handbook” within six months of the permit effective date. The MS4 partners have started assessing the effectiveness of existing Best Management Practices using a UNM civil engineering professor. This research is not expected to give definitive guidance to allow an effective date of the permit in the next 6 to 8 months. In addition, the funding for this endeavor was not included in the DOT’s FY 2011 Budget. Therefore, the DOT respectfully requests a “compliance due date” of 2012/2013 with updates every 10 years, thereafter.

Response 3: Noted in the administrative record. The final permit will change the compliance deadline to “Within six months of issuance of the new Construction General Permit.”

Comment 4: In Part I.C.5.b. Table 1.B, there is a requirement to mimic pre-development hydrology of the previously undeveloped site. NMDOT projects are roadway projects that need to comply with AASHTO safety guidelines – with in most cases result in increased runoff from added impermeable surfaces, such as widened shoulders and additional highway lanes. There is limited space within NMDOT right-of-way to place ponds or other such structures to detain additional flow, and often, placement of such structures in high-speed, high-traffic highways, could constitute a safety hazard. The DOT requests clarification regarding EPA’s goals for the DOT with regards to “mimicking the pre-development hydrology” on roadway projects.

Response 4: EPA recognizes that NMDOT is subject to road safety guidelines. In instances where compliance with pre-development hydrology conflicts with AASHTO road safety guidelines and cannot be resolved with design alternatives, NMDOT may choose to participate in off-site mitigation or a payment in lieu program. No changes are made to the final permit as a result of this comment.

Comment 5: In Part I.C.5.d., The NMDOT does not have the authority over the requirements herein, except for facilities and right-of-ways owned and operated by the Department.

Response 5: Noted in the administrative record. See Response 22 above to John Kelly, AMAFCA Executive Engineer. The final permit will change the language to include “...(Note:

If no such facilities are in a co-permittee's jurisdiction, that co-permittee may certify that this program requirement does not apply.)..." Additionally, the final permit will change language at Part I.C.5.g to "...Where available, collection programs operated by third parties or co-permittees may be a component of the programs..."

Comment 6: Regarding Part I.C.5.e., The NMDOT shall continue to ensure that all illicit discharges associated with its day-to-day operations are addressed; will continue to work with Law Enforcement and Local Emergency Service personnel to address spills within DOT roadway Right-of-way; And, will continue to Patrol DOT Right-of-Ways and contact the City of Albuquerque or appropriate Agency in the event that illicit discharges are identified from adjacent properties.

Response 6: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 7: Regarding Part I.C.5.e., The NMDOT is not an enforcement Agency and defers to the City of Albuquerque's ordinances and/or other regulatory mechanisms to enforce an Illicit Discharge Detection and Elimination (IDDE) Program, therefore, requests that NMDOT not be included as a "Responsible Permittee" for the enforcement of an IDDE Program outside of the DOT property and right-of-ways. The NMDOT shall continue to patrol the DOT Right-of-Way and contact the City of Albuquerque or appropriate Agency in the event that illicit discharges are identified from adjacent properties.

Response 7: Noted in the administrative record. See Response 22 above to John Kelly, AMAFCA Executive Engineer.

Comment 8: Regarding Table III D., Dissolved Oxygen and Table VI H., Toxicity Monitoring – The Permit identifies the COA and AMAFCA as the 2 "responsible permittees," therefore, the NMDOT requests to be removed from the permit requirement to "provide support" for Toxicity and Dissolved Oxygen studies. In addition, the DOT requests clarification on the "as needed" phrase in the Compliance Due Date columns.

Response 8: Noted in the administrative record. Because there is potential for pollutants (e.g. pollutants in road runoff) from the NMDOT operated portion of the MS4 to contribute to exceedances of the dissolved water quality standards, NMDOT is expected to provide support to the study. Permittees may coordinate via memorandum of understanding, cooperative agreements, or similar mechanisms (e.g. Joint Powers Agreement) with one another to designate joint/individual co-permittee responsibilities including support for pollutant studies. The final permit will change the language to "provide support for toxicity study as agreed upon by co-permittees."

Comment 9: It appears that Tables are missing in Part VI referencing sections from the Permit. The Specific sections that seem to be missing are as follows:

- a. Pollution Prevention and Good Housekeeping for municipal operations referencing Part I.C.5.c (Page 11 on Part I)
- b. Spill Prevention from Part I.C.5.h (Page 16 of Part I).

Response 9: Noted in the administrative record. See Response 5 above to David S. Campbell, City of Albuquerque Chief Administrative Officer.

Comment 10: The DOT concurs with the COA comment regarding the concept of controlling runoff from sites to "pre-development runoff", as some development has a legitimate purpose as flood control. In addition, the New Mexico Office of State Engineer does not currently allow diversions of rainwater except that which can be beneficially used from roof runoff. The co-permittees will require additional time to work out these concepts related to Permit section I.C.5.b and Table 1.B and will require cooperation with the State Engineer's Office. Significant changes will potentially require changes to existing statutory and regulatory requirements.

Response 10: EPA recognizes that the permittees may be subject to additional state or local flood control and appropriation requirements. See Response 6 above to David S. Campbell, City of Albuquerque Chief Administrative Officer.

Comment 11: The DOT request clarification regarding the suggested definition of runoff reduction stated in the permit in Table 1.B item 9. The co-permittees would like to engage in a technical discussion of the potential runoff reduction possible in this area over the course of this permit cycle based on low annual rainfall; potentially intense localized storm events and very significant grades within the stormwater basin.

Response 11: Noted in the administrative record. See Response 6 above to David S. Campbell, City of Albuquerque Chief Administrative Officer.

Comment 12: Regarding Part III.E & III.F, the NMDOT does not have many ponds within the MS4 to monitor for meaningful estimate of floatables. There are a limited number of small ponds, and therefore, in the past the NMDOT relied on the data obtained from the COA and AMAFCA ponds which are much bigger than the DOT's small and limited number of ponds. Also, the DOT proposes to combine wet and dry weather screening to just "screening" regardless of wet or dry seasons.

Response 12: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 13: In Part III.G, Table IX requires testing of year-round streams that are tributary to the impaired waters. There are no year-round streams in the Albuquerque MS4. The DOT along with the City, respectfully requests that this requirement be removed

Response 13: Noted in the administrative record. Part III.G and Part VI. Table IX do not require testing of year-round streams. The requirement is for in-stream wet weather monitoring performed annually. No changes are made to the final permit as a result of this comment.

7. Joel Straquadine, The University of New Mexico

Comment 1: GENERAL COMMENTS ON THE DRAFT PERMIT: Responsibilities of the Co-Permittees – Under 40 CFR § 122.26(b)(1) of the Environmental Protection Agency (“EPA”)’s regulations, a co-permittee is defined as an entity “that is only responsible for permit conditions relating to the discharge for which it is an operator.” The definitions section of the draft permit, Part VII, § (5), incorporates the regulatory definition for a co-permittee. Furthermore, under 40 CFR § 122.26(a)(3)(vi), “Co-permittees need only comply with permit conditions relating to discharges from the municipal separate sewer systems for which they are operators.” While the provisions of the draft permit are generally consistent with the definition and responsibilities of a co-permittee under the CFR regulations, in several instances, however, both explicitly and impliedly, the draft permit could be read to expand UNM’s scope of responsibility beyond “the discharge for which it is an operator.” Such deviations from the regulatory definition of a co-permittee are of concern to UNM in that they create ambiguities within the draft permit, are inconsistent with prior agreements among the co-permittees, exceed the regulatory authority of EPA, and impose requirements that exceed the authority of UNM’s Board of Regents.

In the majority of the tables included in Part VI of the draft permit, all four co-permittees are listed in the “Responsible Permittee(s)” column for each item on the tables, instead of limiting the selection to only those co-permittees responsible for implementing a given task. Such indiscriminate inclusion of the four co-permittees occurs in Tables I.A through I.H; Tables II.A through II.C; and Tables VII through IX. UNM objects to listing all four entities in this way, which may attempt to impose responsibilities on UNM for implementing tasks that are outside of UNM’s authority and jurisdiction. As well, this improperly diverts responsibilities away from the responsible party. This issue is of concern especially in light of the language in Page 1, Part IV.A, which states that, “The permittee(s) must comply with all conditions of this permit insofar as those conditions are applicable to each permittee, either individually or jointly.”

Response 1: Noted in the administrative record. EPA acknowledges that each co-permittee may not individually have the jurisdiction necessary to comply with the various requirements of the draft permit. However, the co-permittees may coordinate via memorandum of understanding, cooperative agreements, or similar mechanisms (e.g. Joint Powers Agreement) with one another to designate joint/individual co-permittee responsibilities. No changes are made to the final permit as a result of this comment.

Comment 2: GENERAL COMMENTS ON THE DRAFT PERMIT: Potentially Responsible Parties for Impaired Water Quality – For the most part, no clear potentially responsible parties have been identified for the conditions that the EPA and the New Mexico Environmental Department (“NMED”) assert as having impaired water quality in the Middle Rio

Grande ("MRG"). Normally, it is the environmental regulatory agencies' role to monitor and investigate PRPs instead of placing that burden on MS4 entities, such as UNM, which have neither the legal authority nor legislative mandate to do such.

The EPA and NMED should consider conducting a thorough investigation to identify PRPs that contribute to the E-coli, dissolved oxygen ("DO"), polychlorinated biphenyls (PCBs), and temperature impairments upstream of the afflicted urban section of the MRG. For example, the co-permittees have learned from NMED that it has not investigated biological oxygen demand ("BOD") conditions on the tributaries (including ephemeral) to the MRG upstream of Highway 550 and Cochiti Lake tail waters. Since BOD exerts a delayed oxygen demand, BOD from upstream sources can deplete DO in the downstream impaired reach. Therefore, onerous permit conditions could be misapplied to the DO impaired reach of the MRG when the bulk of the DO destroying BOD may actually originate upstream. As another example, historical US Geological Survey ("USGS") data, such as from July 28, 2006, show that the most dramatic DO sags coincide with other storm flows into the MRG when AMAFCA'S North Diversion Channel ("NDC") is not even flowing. There should be a more significant basis for targeting the metropolitan Albuquerque storm watershed as the primary DO PRPs than that it is urban and adjacent.

Assumptions about urban PRPs may or may not be well justified. The on-going problem of wild cat dumping or the historical practice of oiling rural (or formerly rural) dirt roads could just as likely be a source of PCBs in the MRG watershed as industrial point sources. Alternatively, the PCBs may be ubiquitous, such as from atmospheric deposition and from local widely dispersed non-point sources.

Birds have been identified as the primary source of E-coli contamination in the MRG. There are wild birds (e.g., Rio Grande and Rocky Mountain flyway waterfowl) living directly in the MRG and in both the rural and urban areas of the watershed. The urbanized area of the MRG is not particularly known for large-scale domesticated bird agriculture, but there is at least one such facility in the rural agricultural areas.

In regard to temperature, UNM believes that the existing body of monitoring data clearly demonstrates that discharges from the MS4 are consistently within the temperature standards for the MRG designated uses. Given these data and the feedback from the June 21, 2010 EPA Public Meeting, it seems again that the urbanized area in which the City of Albuquerque is located was assumed to be an excessively warm storm water discharging PRP simply because it is urban and adjacent.

Response 2: Noted in the administrative record. As required by the CWA 402(p)(3)(B)(iii) and 40 CFR 122.44(d), NPDES permits must include controls where discharges may be causing or contributing to exceedances of water quality standards and state requirements. Data on runoff from the Albuquerque area indicates MS4 discharges do contain pollutants of concern. No changes are made to the final permit as a result of this comment.

Comment 3: GENERAL COMMENTS ON THE DRAFT PERMIT: Watershed Based Approach – If water quality in the MRG is to be improved, all the tributaries that contribute to

the impairments in the MRG need to be regulated to reduce their pollutant loadings. This is why the regulatory agencies (EPA and NMED) need to better define the contributions (e.g., BOD) from MRG sources and PRPs upstream of the urbanized area. Having such information on hand is essential to properly sizing the geographical area in the watershed that needs to be regulated.

Response 3: Noted in the administrative record. EPA is undergoing evaluation and analysis, including pollutant sources and stressors, of existing watershed data in the Middle Rio Grande (e.g., hydrology, topography, soils, climate, wildlife, land use/land cover, TMDLs, demographics) to support development and issuance of a proposed NPDES Watershed Based MS4 permit. No changes are made to the final permit as a result of this comment.

Comment 4: GENERAL COMMENTS ON THE DRAFT PERMIT: Focusing Limited MS4 Financial Resources for Monitoring -- Presumably, the co-permittees will continue to face budget reductions for years due to the current and projected economic downturn. As state and local entities, the co-permittees will struggle to afford the cost increases implicit in the draft permit.

One area of relief already mentioned to the EPA and NMED is refocusing the co-permittees' expensive monitoring efforts away from the current approach of broad monitoring to a focus on monitoring the constituents related to the perceived impairments to the MRG, such as E-coli, BOD, and PCBs.

After several years and millions of dollars paid to the USGS to perform our required monitoring using a broad monitoring approach, the co-permittees have not detected significant concentrations of heavy metals, pesticides, VOCs, acids, and bases or neutral compounds. Therefore, we propose that heavy metals, pesticides, VOCs, acids, and bases or neutral compounds be dropped from our required monitoring, and that the financial resources used for that monitoring be redirected to help defray the costs of the expensive new monitoring required under the draft permit, especially for PCBs.

Response 4: Noted in the administrative record. The permittee may wish to explore a more cost effective means of gathering required data. See above Response 159 to John Kelly, AMAFCA Executive Engineer.

Comment 5: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 3, Part I.A -- The scope of the permit's coverage, as stated in subsection 1 is the MS4 "owned and/or operated by the permittees." As the term "owned" is not part of the regulatory definition of a permittee, it should be omitted here. Furthermore, UNM is concerned that the convention of using the terms "permittee," "permittees," and "co-permittees interchangeably within the body of the draft permit has the consequence of making certain provisions of the draft permit ambiguous and subject to multiple interpretations.

Response 5: Noted in the administrative record. The term "owned" is taken from the definition of large municipal separate storm sewer system at 40 CFR 122.26(b)(4). See Response 1 above. No changes are made to the final permit as a result of this comment.

ESA Consultation with US Fish and Wildlife Service

Comment 6: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 4, Part I.B.1.d – Existing monitoring data show that MS4 discharges are more than sufficiently oxygenated. As AMAFCA has presented on several occasions, including at the recent EPA Region 6 MS4 Conference in Santa Fe, the DO sag identified in the Van Horn data is associated with storm water pushing anoxic NDC embayment water into the MRG.

Response 6: While discharges may contain a level of dissolved oxygen at the time of discharge, pollutants in that discharge exert an oxygen demand after discharge which could result in impacts to receiving waters. As required by 40 CFR 122.49(c), EPA must ensure that any action it authorizes is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. EPA underwent formal consultation with the U.S. Fish and Wildlife Service (FWS) on the effects of this permit action. USFWS issued a Biological Opinion on this permit on September 29, 2011. As a result of this consultation, the final permit will include the following requirements in Part I.B.1 of the permit:

1. Complete the remedial action selected for the North Diversion Channel Embayment within 1.5 years of this permit's effective date.
2. Conduct continuous monitoring of dissolved oxygen (DO) and temperature in the North Diversion Channel Embayment and at one (1) location in the Rio Grande downstream of the mouth of the North Diversion Channel within the action area (e.g., Rio Bravo Bridge) to verify the remedial action is successful for the duration of the permit. It is recommended that continuous monitoring data be provided online for public review.
3. Provide the FWS with the following data and information on all qualifying storm events: date of any qualifying stormwater event(s), DO value in Embayment, DO value at downstream monitoring station, flow rate in the North Diversion Channel, daily flow rate in the Rio Grande, and sum of silvery minnows taken.
4. Describe, in annual reports, all standard operating procedures, quality assurance plans, maintenance, and implementation schedules to assure that timely and accurate water temperature, DO, oxygen saturation, and flow data are collected, summarized, evaluated and reported.
5. Provide the FWS with electronic copies of all incidental take, interim, and annual reports required by this permit no later than March 31st for the preceding calendar year ending December 31st to nmesfo@fws.gov or by mail to the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.
6. Participate, with EPA and the FWS, in an annual meeting (may be via teleconference) during the permit period to review the remedial action progress, information gathered, and incidental take estimates associated with qualifying storm events.

Comment 7: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 4, Part I.B.1.e – Existing MS4 monitoring data prepared by EPA approved laboratory methods show no evidence of PCBs in the NDC drainage areas.

The NMED recently has informed EPA and the co-permittees of PCBs in the MRG during storm events. However, that does not necessarily implicate the NDC as the likely source of such PCBs already in the MRG. PCBs in the MRG during storms can originate from a variety of sources, e.g., in-river sediment scour, or other tributaries to the MRG. In the event that the co-permittees', or preferably the EPA or NMED's, PCB monitoring in the NDC drainage areas, using the expensive congener method, identifies controllable sources of PCBs, then the co-permittees will consult with the EPA and NMED on developing PCB controls, monitoring, reporting, etc.

Response 7: Noted in the administrative record. However, previous testing by the permittees in the North Diversion Channel was done with a test method not sufficiently sensitive to detect PCBs at the level of concern, providing no assurance that PCBs were in fact absent. Additionally, see Response 2 above. No changes are made to the final permit as a result of this comment.

Comment 8: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 4, Part I.B.1.f – Existing MS4 storm water temperature monitoring data indicate that storm water does not contribute to the perceived temperature impairment in the MRG. On the contrary, the generally cooler storm water helps cool off the warm MRG river water to a level closer to the range required by the river use designation.

Response 8: Noted in the administrative record. See Response 2 above. No changes are made to the final permit as a result of this comment.

Comment 9: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 6 Part I.C.2 – UNM does not have the legal authority or legislative mandate to implement statutes or ordinances, or to issue permits or executive orders related to environmental protection. Such would be inconsistent with the mission of a university. These regulatory functions are primarily the purview of the NMED, EPA, and perhaps some of the larger traditional municipalities in New Mexico.

Of the mentioned legal authorities, only contractual, such as in the context of construction projects, and interagency or inter-jurisdictional agreements, such as with other NPDES permittees, are options appropriate for UNM. Accordingly, UNM will continue to rely on the broader legal and financial authorities of other co-permittees, in particular the City of Albuquerque and AMAFCA, to accomplish many of the draft permit requirements. Within UNM, environmental protection is primarily accomplished by internal policy.

Response 9: Noted in the administrative record. See Response 22 above to John Kelly, AMAFCA Executive Engineer.

Comment 10: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 6 Part I.C.3 – Under subsection b of Part I, C.3, through a formal written arrangement with another entity, a permittee may rely on the other entity to implement, on the permittee's behalf,

one or more of the control measures required by the Stormwater Management Program ("SWMP"). The permittee's ability to enter into such an arrangement, however, is dependent on, "The permittee remain[ing] responsible for compliance with the permit obligations if the other entity fails to implement the control measure component." Subsection c of the same section requires UNM "to provide adequate finance, staff, equipment, and support capabilities to fully implement its SWMP and all requirements of this permit [emphasis added]."

UNM's Board of Regents is without authority to assume the responsibilities of the three other co-permittees. As the governing body for a constitutionally created state educational institution, the State of New Mexico has granted certain powers to the Regents so that the Board can exercise its "constitutional autonomy." The Board of Regents, accordingly, has authority to control and manage the university, and, in order to exercise that authority, the power and the "duty to enact laws, rules, and regulations for the government of [UNM]." Art. XII, § 13 of the New Mexico Constitution; § 21-7-7 NMSA 1978. The Regents' authority is limited to UNM, however, and does not include the ability to issue statutes and ordinances or to otherwise exercise jurisdiction over the three other co-permittees outside of entering into contracts with them. Contracting is the primary method by which UNM exercises a measure of control over other entities.

In Part I, C.5.e.iv, the draft permit characterizes universities such as UNM as "[n]on-traditional municipalities," which, unlike a city, serve a limited community consisting of "the faculty, other staff, students, and visitors." As a non-traditional municipality, UNM does not have the scope of authority and capabilities necessary to fully comply with and implement the requirements of the permit.

While UNM can likely provide sufficient resources to implement "its" legally required controls under the SWMP, it cannot legally provide resources to implement all the controls required of the four co-permittees by the permit.

Response 10: Noted in the administrative record. See Response 22 above to John Kelly, AMAFCA Executive Engineer.

Comment 11: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 7, Part I.C.5.a(i) – UNM will be relying on the NMDOT to lead the effort in updating the "NPDES Stormwater Management Guidelines for Construction and Industrial Activities ." Notably, however, the MRG Stormwater Quality Team has funded an Assistant Professor in UNM's Department of Civil Engineering, Mark Charles Stone, to research which BMPs are most effective in arid and semi-arid environments. It is expected that the results of Dr. Stone's work will be incorporated into the update of the BMP Handbook.

Response 11: Noted in the administrative record. The final permit will change the compliance deadline to "Within six months of issuance of the new Construction General Permit."

Comment 12: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 7, Part I.C.5.a(ii, iii, & v) – UNM will continue to implement the construction-related requirements of the permit through contractual arrangements with entities involved in

construction activities at UNM and through pending new construction guidelines from UNM's Office of Capital Projects.

Response 12: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 13: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 7, Part I.C.5.a(iv) – Given that UNM is involved in only its own construction projects, the requirement to “include a[n annotated] listing of all water bodies into which the construction site will discharge” is a needlessly cumbersome and unnecessary requirement for UNM, especially in light of the fact that the goals of this subsection already would be addressed through compliance with C.5.a(ii),(iii), and (v).

Response 13: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 14: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 9, Part I.C.5(a)-(c) – The alternative option of payment in lieu that is discussed in subsection (a) is unlikely to be a viable alternative for UNM due to the manner in which funds are allocated for both new and remodeling projects on campus. In that the off-site mitigation alternative in subsection (a) is limited to “retrofit or redevelopment projects,” UNM requests that subsection (c) remain in the final version of the permit. Retaining this “other” option will allow UNM and the other co-permittees, as they gain expertise and experience, or as technological advances develop, to employ alternatives to the off-site mitigation and payment in lieu options.

Response 14: EPA agrees. The final permit has been changed to add “In a situation where alternative options (a) through (c) above are not feasible, the permittees may submit to the EPA for approval, an alternative option that meets the 90th percentile storm event runoff pre-development hydrology values.” at Part I.C.5(d).

Comment 15: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 10, Part I.C.5.b (viii)(c, d, f) – UNM's campus is in an urban setting with no natural areas, and with no streams in the area of between the campus and the MRG. The upper Tijeras Creek may be the only perennial stream in the metropolitan area part of the MRG watershed. Accordingly, these requirements are not applicable to UNM.

Response 15: EPA does not agree that this section would not apply to the University of New Mexico. The University's storm water system is interconnected with the systems of the other co-permittees, thus would be expected to reach and potentially impact waters of the US. No changes are made to the final permit as a result of this comment.

Comment 16: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 10, Part I.C.5.b (viii)(e) – This requirement may conflict with NMED's groundwater

regulations or, in any event, at least impose the obligation of obtaining a Groundwater Discharge Permit from the NMED.

Response 16: Noted in the administrative record. NMED has certification authority for all NPDES permits authorizing discharges in the state of New Mexico. As such, NMED has thoroughly reviewed the proposed draft permit and did not identify Part I.C.5.b(viii)(e) as an issue. No changes are made to the final permit as a result of this comment.

Comment 17: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 13, Part I.C.5.d – This section should not apply to a university. UNM does not have the legal authority or legislative mandate to implement statutes or ordinances, or to issue permits or executive orders related to environmental protection, especially in terms of regulating external entities.

Response 17: Noted in the administrative record. The final permit will change the language to include "... (Note: If no such facilities are in a co-permittee's jurisdiction, that co-permittee may certify that this program requirement does not apply.)..."

Comment 18: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 14, Part I.C.5.e(i) – As with other universities, UNM does not have the legal authority or legislative mandate to implement ordinances or other similar types of regulatory mechanisms.

Response 18: Noted in the administrative record. See Response 9 above. No changes are made to the final permit as a result of this comment.

Comment 19: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 14, Part I.C.5.e(iii) – The examples are not applicable to a university.

Response 19: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 20: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 14, Part I.C.5.e(iv) – UNM appreciates that the draft permit clearly specifies that the NMDOT is the responsible co-permittee, rather than listing all co-permittees as responsible for this requirement.

Response 20: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 21: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 14, Part I.C.5.e(v)(1) – As with other universities, UNM does not have the legal authority or legislative mandate to implement ordinances or other regulatory mechanisms.

Response 21: Noted in the administrative record. See Response 9 above. No changes are made to the final permit as a result of this comment.

Comment 22: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 16, Part I.C.5.g – Public waste collection is not applicable to a university. Notably, however, UNM does collect and recycle automotive fluids from our fleet operations, as well as fats and greases from campus kitchens. Processed kitchen fats and greases supplement fuel feedstock for UNM's "Veggie Bus," which shuttles to and from remote parking lots. UNM also collects and properly disposes of all other regulated wastes from our internal operations.

Response 22: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 23: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 17, Part I.C.5.i(vii) – In addition to universities, the draft permit notes that hospital complexes, prisons, special districts, and federal facilities are examples of "non-traditional municipalities." We question why other such entities within the City of Albuquerque's incorporated boundaries are not subject to similar permit requirements.

Response 23: Noted in the administrative record. As defined at 40 CFR 122.26(b)(4)(i), a large municipal separate storm sewer system means all municipal separate storm sewers that are located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part). Non-traditional MS4s are only regulated to the extent they operate a system of storm sewers. See also 40 CFR 122.26(b)(16)(iii). No changes are made to the final permit as a result of this comment.

Comment 24: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 1, Part III.A.2 – It is not clear what the "Rapid Bio-Assessment Option" ("RBO") applies to in the draft permit. Unless EPA indicates otherwise, UNM assumes RBO can apply to monitoring biota in the MRG for bio-accumulated contaminants of concern, e.g., PCBs. If so, we respectfully request that the option allow for, at least the substitution of, a Table X PCB sample for an RBO PCB sample that was collected to monitor or investigate for the same purpose. If such substitution is allowed, UNM will be assisting the co-permittees with drafting a rapid bio-assessment monitoring program. This change would be consistent with Page 4, Part III, C.3 in avoiding unnecessary cost and duplication.

Response 24: The rapid bio-assessment option was initially intended to replace representative storm event monitoring. However, EPA is willing to consider alternative monitoring approaches for PCBs, but believes at least some analytical information is needed. No changes are made to the final permit as a result of this comment.

Comment 25: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT:
Page 1, Part III.A.3 – Given the economic downturn and financial hardships that the co-

permittees will continue to face for years, UNM believes that the additional monitoring sites should be chosen for purposes of rotation or strategic geographic variation (especially for any environmentally sensitive areas or areas of greater contamination potential) where annual and other periodic monitoring can take place.

With the five existing major MRG outfall sites, the co-permittees are already spending more than \$400,000 a year combined on monitoring all the contaminants of concern identified in the previous permit. To increase five sites to eight sites for monitoring would be a 60% cost increase (perhaps an additional quarter million dollars per year) which would be difficult to fund, especially in this economic environment.

Response 25: During pre-proposal discussions with the permittees and at the public meeting on the proposed permit, EPA repeatedly expressed willingness to consider proposals by the permittees to reduce monitoring burdens. EPA agrees that monitoring locations should be chosen strategically. Therefore, as requested by the co-permittees in a letter dated May 10, 2011, EPA will change Part VI Table XII.C in the final permit by replacing monitoring location (ML4) Site No. 400B City of Albuquerque Lift Station #32 (USGS Station No. 08330075) with Site No. 330600 Tijeras Arroyo near Albuquerque (USGS Station No. 08330600).

EPA also acknowledges additional monitoring may cause an increase in monitoring costs. However, the purpose of sampling monitoring locations is to identify pollutants which have discharged from the MS4 into a downstream waterbody and has a potential of impacting water quality. No changes are made to the final permit as a result of this comment.

Comment 26: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 2, Part III.A.5.a&c – Due to erratic, typically scattered, and short-duration storms in the semi-arid environment of the MRG, the co-permittees need greater flexibility in timing the sampling duration and aliquots. Since the local laboratories are not open outside of normal Monday through Friday business hours, this further limits weekend storm usefulness for constituents with hold times of less than 60 hours.

Response 26: 40 CFR 122.26(d)(2)(iii) specifies that permittees must collect samples in accordance with 40 CFR 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 136. No changes are made to the final permit as a result of this comment.

Comment 27: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 3, Part III.C – UNM does not have Type 1 or Type 2 industrial facilities, or any industrial or commercial facilities that are known to contribute pollutants to the MS4.

Response 27: The final permit will change the language to "...which discharge to the MS4 provided such facilities are located in their jurisdiction. (Note: If no such facilities are in a

co-permittee's jurisdiction, that co-permittee may certify that this program element does not apply.)..."

Comment 28: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 7, Part III.F – In conjunction with the illicit discharge detection and elimination program, UNM will screen identified suspicious dry weather discharges on campus if sufficient volume of the suspect discharge is recoverable to test for the identified constituents. UNM will continue to rely on the co-permittees' combined wet and dry screening efforts downstream from UNM and in other parts of the metropolitan area MS4 system.

Response 28: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 29: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 1, Part IV.A – This section requires the co-permittees to "comply with all provisions of this permit insofar as those conditions are applicable to each permittee, either individually or jointly." To the extent, if at all, this requires compliance with responsibilities of the other co-permittees, UNM is without authority to comply for the reasons noted above.

Furthermore, as AMAFCA has mentioned to EPA and NMED on several occasions, it has a funded plan to fill in the embayment as soon as the EPA (reportedly waiting on the US Fish and Wildlife Service) approves the plan. This will correct the NDC DO issue. Therefore, the other measures identified in this section are unwarranted and will unnecessarily divert the co-permittees' resources from implementing other more useful monitoring and BMP measures.

Response 29: Noted in the administrative record. See Response 1 above regarding the first item of this comment. See Response 6 above regarding the results of the consultation with FWS. AMAFCA's plans were discussed during the consultation.

Comment 30: SPECIFIC COMMENTS ON PROVISIONS OF THE DRAFT PERMIT: Page 1, Part IV.C – It appears that the reference in this section to Part III.G, which pertains to wet weather monitoring, is an error. Wet weather monitoring is unrelated to the topic of Part VI.C: the procedure for how a permittee should submit a written notice of compliance or noncompliance to the EPA.

Response 30: The discrepancy noted was not identified. No changes are made to the final permit as a result of this comment.

Comment 31: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.A.A.1), Table I.B.A.2), Table I.B.A.15), Table I.D.A.1) & 2), Table I.D.B.1) & 6) – The New Mexico Legislature has not given UNM the authority to fulfill the requirements of this provision. As the coordinator of most of the SWMP components, this poses an additional problem for UNM's Safety and Risk Services ("SRS") in that UNM only has limited authority. That is, while SRS can make recommendations, enforcement must be accomplished by entities with broader

enforcement authority. Generally, "enforcement efforts" are effectuated through contracts during the construction period.

Response 31: Noted in the administrative record. See Response 22 above to John Kelly, AMAFCA Executive Engineer.

Comment 32: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.A.A.8) – An update to the "NPDES manual" is awaiting study results.

Response 32: Noted in the administrative record. See Response 3 above to David S. Campbell, City of Albuquerque Chief Administrative Officer.

Comment 33: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.B – UNM does not permit construction.

Response 33: Noted in the administrative record. See Response 22 above to John Kelly, AMAFCA Executive Engineer.

Comment 34: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.B.A.9) – What if the development results in an improvement of hydrology or results in an improvement of storm water pollution prevention (e.g., reduction in wash out)? On a space constrained campus, mimicking pre-development hydrology may be difficult in many cases. The most plausible and achievable result of development is a reduction in the peak flow to pre-development rates.

Response 34: Noted in the administrative record. See Response 6 above to David S. Campbell, City of Albuquerque Chief Administrative Officer.

Comment 35: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.B.10) – UNM is surrounded by areas that remain outside any UNM influence. UNM, therefore, relies primarily on the City of Albuquerque to enforce ordinances and control flow to the campus property.

Response 35: Noted in the administrative record. See Response 1 above. No changes are made to the final permit as a result of this comment.

Comment 36: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.C.2) – Based on Standard Industrial Code, UNM operations are exempt from classification as an industrial high risk operation. All potentially "high risk" operations are conducted in such a way that they are not exposed to precipitation.

Response 36: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 37: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.D.A.5), Table II.A.A.2) & 3) – UNM is surrounded by areas that remain outside any UNM influence. UNM, therefore, relies primarily on the City of Albuquerque to enforce ordinances and control flow to the campus property. UNM is included in co-permittee DMRs and other combined reports.

Response 37: Noted in the administrative record. See Response 1 above. No changes are made to the final permit as a result of this comment.

Comment 38: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.D.A.6) & B.9) – The requirement has NMDOT delineated in parentheses; however, the column stating the responsible permittee includes UNM. Please verify that UNM is not responsible for these tasks.

Response 38: Noted in the Administrative Record. For clarification purposes, the final permit will change Part VI, Table I.E to isolate NMDOT as the sole responsible co-permittee for these requirements.

Comment 39: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.D.B.2) – UNM drainages do not drain directly into waters of the United States.

Response 39: The University of New Mexico's storm sewer system is interconnected with the systems of the other co-permittees thus would be expected to reach and potentially impact waters of the US. No changes are made to the final permit as a result of this comment.

Comment 40: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.D.B.3) – UNM is surrounded by areas that remain outside any UNM influence. UNM, therefore, relies primarily on the City of Albuquerque to enforce ordinances and control flow to the campus property. UNM is included in co-permittee DMRs and other combined reports.

Response 40: Noted in the administrative record. See Response 1 above. No changes are made to the final permit as a result of this comment.

Comment 41: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.D.B.4) – Illicit discharges are managed as emergencies. Any person who becomes aware of an illicit discharge is encouraged to contact UNM Campus Police or SRS. However, due to limited staffing, holiday schedule, and the standard workweek schedule, a 48-hour response time may be unrealistic in some cases.

Response 41: Noted in the administrative record. See Response 73 above to John Kelly, AMAFCA Executive Engineer.

Comment 42: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.D.B.7) & 8) &11) &12) – Based on past wet and dry weather screening, UNM has not detected any storm water quality issues. However, UNM will continue to look for areas to aid in prioritizing basins and catchments. UNM would rely on the NMED or, perhaps City of Albuquerque, in the future for illicit discharge enforcement and guidance. The ultimate results and actions are dependent on the results of the assessment.

Response 42: Noted in the Administrative Record. No changes are made to the final permit as a result of this comment.

Comment 43: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I E-H – The specific provision referenced in section A of each of these tables is incorrectly cited: Table I.E should reference Part I.C.5.f.; similarly, Table I.F should reference g, Table I.G should reference i, and Table I.H should reference j.

Response 43: EPA agrees. These citations will be corrected in the final permit as a result of this comment.

Comment 44: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I F.A.1) – UNM does not generate large amounts of waste fluids. Those that are generated are picked up on an as-needed basis and handled through contractors for recycling or disposal. Increase in the frequency of pickup is therefore not applicable to UNM.

Response 44: Noted in the Administrative Record. No changes are made to the final permit as a result of this comment.

Comment 45: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table I.G.A.2) – Should Part I.C.5.k. (5) be Part I.C.5.j. (5)?

Response 45: EPA agrees that Part I.C.5,k(5) is an incorrect citation. The citation is corrected to Part I.C.5.i(v)(5) in the final permit.

Comment 46: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table II.A – Should this include the duration and location of the event, given that sparse or dispersed rainfall in our semi-arid climate may preclude the opportunity to sample?

Response 46: The permittees may choose to provide information beyond that required by the permit, such as the duration and location of the event, if they believe it is pertinent in demonstrating compliance with permit requirements.

Comment 47d: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table II.A.C – The TMDL has recently changed bacterial monitoring from Fecal Coliform to E-coli.

Therefore, UNM is not sure if sufficient E-coli exists to establish a baseline. The first year or so may be needed to establish an E-coli baseline for comparison.

Response 47: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 48: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table III.A – Where is Part I.C.1.d?

Response 48: EPA agrees that Part I.C.1.d is an incorrect citation. The citation is corrected to Part I.B.1.d in the final permit.

Comment 49: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table III.B – UNM questions whether enough DO data exist for determination of causes, baseline comparison, and possible corrective actions under the required two month schedule?

Response 49: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 50: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table VII. A.1), 3), 5), Table VIII.A.3) – Do enough DO data exist for determination of causes, baseline comparison, and possible corrective actions? There is a limited amount of MRG BOD sampling and analysis available according to NMED. The EPA and/or NMED should consider assessing BOD impacts on MRG DO impairment.

Response 50: Noted in the administrative record. No changes are made to the final permit as a result of this comment.

Comment 51: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table VII.A.5) – Benchmarking against national storm water databases and data would not likely be very helpful for our semi-arid climate.

Response 51: Noted in the Administrative Record. However, some nationally available data is from arid/semi-arid locations and may be more useful for comparisons. No changes are made to the final permit as a result of this comment.

Comment 52: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table VII.A.6) – No streams occur on the UNM campus.

Response 52: Noted in the Administrative Record. No changes are made to the final permit as a result of this comment.

Comment 53: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table VII.A.6) & Table IX.A.6) – Given the nature of the Rio Grande sediment and sand bars are part of the natural structure.

Response 53: Noted in the Administrative Record. No changes are made to the final permit as a result of this comment.

Comment 54: SPECIFIC COMMENTS ON TABLES IN THE DRAFT PERMIT: Table III-VI – UNM has contributed to such efforts through monetary support. If there is a problem detected in waters or other jurisdictions not under control of UNM, UNM cannot undertake enforcement action.

Response 54: Noted in the administrative record. See Response 1 above.

8. Julie Alcon, US Army Corps of Engineers Environmental Resources Section

Comment 1: Please incorporate appropriate water quality conditions and conservation measures from the concurrence letter (Cons. #22420-2010-I-0075) into the NPDES permit.

Response 1: Noted in the Administrative Record. EPA acknowledges the agreement between the U.S. Army Corps of Engineers and the Fish and Wildlife Service regarding the Southwest Valley Flood Damage Reduction Project of which the Albuquerque Metropolitan Arroyo Flood Control Authority and Bernalillo County will operate and maintain.

